

# **REPORT ON THE Alabama Historical Commission State of Alabama**



## **Department of Examiners of Public Accounts**

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August 24, 2005

Senator Larry Dixon  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Dixon,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Historical Commission** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Historical Commission** in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones  
Chief Examiner



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## PROFILE

### Purpose/Authority

The Alabama Historical Commission operates under the provisions of the *Code of Alabama 1975*, Sections 41-9-240 through 41-9-262, as amended, for the preservation of building and sites with historical, archaeological, or architectural significance.

The commission's headquarters are at the historic Teague and Rice/Semple Haardt Houses located at 468 South Perry Street in Montgomery. Additional historical properties administered by the commission include Belle Mont, Bottle Creek Mounds, Cahawba Park, John Tyler Morgan House, Confederate Memorial Park and Cemetery, Fendall Hall, Dr. Francis Medical Museum, Gaineswood, Magnolia Grove, Pond Springs, Truss-Watson House, Tardy Cottage, Fort Mims, Fort Morgan, and Fort Toulouse. The commission also owns the Victor Tulane Building and South Perry Street Apartments.

The commission's enabling statutes establish a Board of Advisors to the Alabama Historical Commission consisting of no less than 15 persons. Contained in the appendices is a listing of each of the societies, organizations, individuals, commissions and institutions having the authority to name one member to the board of advisors. Also contained in the appendices are other advisory boards created by the commission's enabling statutes.

## **COMMISSION CHARACTERISTICS**

<b>Members</b>	20
<b>Term</b>	6-years
<b>Selection</b>	<p>20 members including the following: Seven ex-officio members:</p> <ul style="list-style-type: none"><li>• Governor</li><li>• Lieutenant Governor</li><li>• Speaker, House of Representatives</li><li>• Director, Department of Archives and History</li><li>• Director, Bureau of Tourism and Travel</li><li>• Commissioner, Conservation and Natural Resources</li><li>• Director, Building Commission – Technical Staff</li></ul> <p>Thirteen members representing:</p> <ul style="list-style-type: none"><li>• State universities</li><li>• Alabama Council of the American Institute of Architects</li><li>• Alabama Historical Association</li><li>• Alabama State Chamber of Commerce</li><li>• Alabama Farmers Federation</li><li>• Alabama Archaeological Society</li><li>• State-at-large</li></ul> <p>In addition to the twenty members, the Chairman of the Restructured Historic Chattahoochee Commission serves as an ex officio policy making member of the commission.</p>
<b>Qualifications</b>	Those members who are not ex-officio members are appointed based on a demonstrated interest in and concern about the preservation of Alabama history.
<b>Racial Representation</b>	No statutory requirement - two black members
<b>Geographical Representation</b>	No statutory requirement
<b>Consumer Representation</b>	No statutory requirement
<b>Other Representation</b>	No statutory requirement

**Compensation** No compensation  
Members receive expenses incurred in the discharge of their duties as members of the commission paid in amounts afforded state employees and officers.

## **OPERATIONS**

**Administrator** Elizabeth Brown  
Interim Executive Director  
Salary \$72,255

**Location** 468 South Perry St.  
Montgomery, AL 36130

**Employees** As of July 8, 2005 - 75 merit system  
3 non-merit system

**Legal Counsel** Assistant Attorney General

**Internet Presence** The board maintains a website at  
<http://www.preserveala.org> with information on

- Preservation Programs
- Historic Sites
- Grants and tax credits
- Volunteer opportunities
- AHC archeological survey and testing policy
- AHC archeological programs
- Educational opportunities
- Information on the National Historic Preservation Act of 1966, known as Section 106

**Attended Board Member Training** September 18, 2002  
Personnel Manager  
Grants/Contract Manager

## **FINANCIAL**

**Source of Funds** Appropriations from the General Fund as well as gifts, donations, and grants

**State Treasury** Yes

**Unused Funds** Funds received from grants, gifts, donations, etc. are retained at year end.

## SIGNIFICANT ITEMS

### **1. The commission has significantly reduced its staff.**

At its May 4, 2005 meeting, the commission discussed its financial condition. The commission's April financial statements indicated that, due to shortfalls in projected revenues and state budget cuts, the budget for the commission was approximately \$700,000 out of balance, and the shortfall was expected to balloon to \$1.3 million by the 2006 fiscal year. The commission elected to take \$683,199 from its Transco settlement trust fund to cover the fiscal year 2005 difference, and voted not to authorize merit salary increases for the remainder of the 2005 year. In order to cut future expenses, the commission voted to lay off approximately 25% of its work force, or about 30 employees. Once the layoffs were announced, thirteen employees transferred to other agencies, and five reverted to prior positions with lower salaries. Approximately fourteen people were actually laid off or otherwise separated from employment.

### **2. The Department of Examiners of Public Accounts received communications questioning the commission's permitting process under the Underwater Cultural Resources Act and the authority of the commission to issue such permits on a statewide basis.**

#### **Scope of Act is Statewide, with Limits Permits are Authorized by Law**

The Alabama Historical Commission's duties and powers include those provided in the *Code of Alabama 1975*, Sections 41-9-290 through 41-9-299.2, known as the "Alabama Underwater Cultural Resources Act". This act, which became effective September 1, 1999, defines underwater cultural resources as "all abandoned shipwrecks or remains of those ships and all underwater archaeological treasures, artifacts, treasure troves, or other cultural articles and materials, whether or not associated with any shipwreck, *that are contained in or on submerged lands belonging to the State of Alabama and the sea within the jurisdiction of the state*, and that have remained unclaimed for more than 50 years, excluding therefrom sunken logs, cants, and timber resources of any other type not associated as part of a shipping vessel, and are eligible for, or listed in, the National Register of Historic Places or the Alabama Register of Landmarks and Heritage."

The "Alabama Underwater Cultural Resources Act" declares the underwater cultural resources to be subject to the exclusive dominion and control of the State of Alabama, and designates the Alabama Historical Commission as the official custodian of state cultural resources within the jurisdiction of the State of Alabama while also providing for the management of the resources and the *issuance of permits to "any qualified individual, company, corporation, or public institution desiring to conduct any type of exploration or excavation of cultural resources... if the commission finds that the granting of a permit or contract is in the best interest of the state, it may, subject to the other provisions of this division, grant the applicant a permit or contract for a period of*

*time and under those terms and conditions as the commission considers to be in the best interest of the state.”*

A conversation with the commission’s executive director, Elizabeth Brown and the State Archaeologist, Tom Maher, revealed the following;

- The commission considers that the Underwater Cultural Resources Act does not apply on private property or corporate property, unless waterways on that property are deemed to be state-owned waterways.
- The commission considers that the act only applies to those state-owned waterways that are eligible for, or listed in, the National Register of Historic Places or the Alabama Register of Landmarks and Heritage.
- Whether or not submerged land is state-owned is determined by the Department of Conservation and Natural Resources.

A conversation with James Griggs, Director of the Lands Division of the Department of Conservation and Natural Resources revealed that the Department of Conservation and Natural Resources utilizes the following rules regarding state ownership of submerged lands:

- Waterways determined to be navigable are state-owned. Waterways are considered navigable if it can be determined the waterway has at some time been used for commercial navigation purposes (i.e. floating logs to market).
- If the waters are tidally influenced (coastal waters), the state owns the land up to the mean high tide line
- If the waters are a non-tidal stream, the state owns the land to the mean low water mark.
- If a non-tidal stream has been impounded, the state owns the land to the mean low water mark of the original streambed before impoundment.
- All land adjoining state-owned waterways is owned either by the Army Corps of Engineers (if the surrounding land is purchased by the Army Corps of Engineers during impoundment) or the private landowner.

#### **Activity Without a Permit is a Criminal Act**

The “Alabama Underwater Cultural Resources Act” further declares “A person commits the crime of theft or disturbance of a cultural resource protected by the commission if the person ...intentionally and knowingly removes, alters, disturbs, or destroys any cultural resource without the *prior written authorization of the commission by permit or contract* or knowingly buys, receives, conceals, aids in the concealment of, or possesses any illegally obtained cultural resources.” The commission of such crime shall constitute a Class A misdemeanor if the value of the cultural resources is less than \$1000 and shall constitute a Class C felony if the value of the cultural resources is \$1000 or more and all equipment used directly in connection with the offense(s) shall be seized.

### **Enforcement of the Act**

The act contains the provision that, “All law enforcement agencies and officers, state and local, are directed to assist the commission in the enforcement of this act.” A conversation with the Elizabeth Brown, the commission’s executive director and Tom Maher, State Archaeologist revealed that they were aware of only one enforcement action under authority of the Underwater Cultural Resources Act. In that action, the assistance of a law enforcement officer of the Department of Conservation and Natural Resources was utilized. The action is now under litigation styled *State of Alabama v. Steven David Phillips* as Case Number CC 2004 000082 00 in the Circuit Court of Dallas County. Both Brown and Maher stated that they have been subpoenaed to appear before the court in this action.

### **The Department of Conservation and Natural Resources and the Federal Army Corps of Engineers are Involved in the Permitting Process**

Permits for archaeological activities on federal properties (i.e. national monuments or national forests) must obtain federal permits. Permits for underwater archaeological activities within the state must have the approval of the Department of Conservation and Natural Resources, while underwater activities within navigable waterways must have the approval of the Army Corps of Engineers.

### **Permits Issued by the Historical Commission**

The Alabama Historical Commission issues three types of permits under authority of the Alabama Underwater Cultural Resources Act.

<b>TYPE OF PERMIT</b>	<b>PURPOSE OF PERMIT</b>
Recreational dive permit	To dive in state-controlled waters for recreational purposes, or for dive instructors teaching dive classes
Survey and Identification	To search Alabama’s waters for anomalies that may prove to be cultural resources. Search methods usually include non-invasive techniques such as scanning the water bottom with a magnetic-sensing device or side-scanning sonar as well as limited hand fanning or probing with a solid-core probe
Excavation and Salvage	For those who have found promising anomalies and wish to do more intensive investigation requiring greater amounts of disturbance in the water bed in order to positively identify target vessels or items. Any excavation and salvage work <b>must be supervised by a qualified archaeologist.</b>

All three types of permits are issued for six months with one extension allowed.

### **Permits Issued**

The State Archaeologist, Tom Maher, stated that the following permits had been approved/issued for the period January 1, 1999 through August 4, 2005.

Recreational Dive Permits - 1 request with 1 issued  
Search and Identification Permits - 24 requests with 22 issued  
Excavation Permits - 3 requests with 3 issued

### **Process of Issuing Permits**

The commission has adopted the following administrative rules found in the Alabama Administrative Code Section 460-X-12-.01, a process for issuing the various permits.

- The permittee submits a written request for a permit, including the coordinates of the search area, the nature of the search or excavation, and, if seeking an excavation and salvage permit, the names of project archaeologists and their qualifications.
- The State Archaeologist prepares a draft of the permit using language specified in the “Alabama Underwater Cultural Resources Act” and asks the permittee if the general guidelines set forth in the permit are sufficient. If any changes are requested, they will be included in the permit as attachments.
- The State Archaeologist submits the permit and any attachments to the Department of Conservation and Natural Resources for review. If the proposed search area requires additional permits from the Army Corps of Engineers or other parties, the Department of Conservation and Natural Resources will alert the State Archaeologist.
- The proposed permit is submitted to the commission’s Maritime Advisory Council for review. Any changes that the Department of Conservation or the Maritime Advisory Council makes to the permit will automatically restart the review process.
- Once all necessary reviews have been completed, the commission’s executive director and the permittee sign two copies of the permit – one for the commission’s files, and one for the permittee.

### **Approved Archaeologists on the Commission’s Internet Website**

The commission maintains a listing of approved professional archaeologists on its Internet website. State Archaeologist Tom Maher stated that the listing was for the convenience of persons or entities seeking the services of a local archaeologist. He further stated that upon approval by the Council of Alabama Archaeology and the Alabama Historical Commission, any archaeologist could be added to the list of approved professional archaeologists maintained by the Alabama Historical Commission. Maher stated that he personally verifies the qualifications of archaeologists supervising permitted activities.

### **Qualifications of Archaeologists**

The state of Alabama does not certify or license professional archaeologists. The commission has instituted, through its Administrative Code, Sections 460-X-9-.01, 460-X-9-.02, and 460-X-9-.03, requirements and procedures for archaeologists to become

approved by the commission. These Administrative Code sections are included in the appendices of this report.

## **COMPLIANCE EXAMINATION FINDINGS**

A report of the most recent compliance examination conducted by the Examiners of Public Accounts was released March 18, 2005. The report's findings are summarized in this section. Responses from the commission and observations by the Examiners of Public Accounts subsequent to the compliance examination report are also presented in this section.

The complete compliance examination report is attached as an appendix to this report.

### **Finding #1 - Personnel Actions, Related Expenditures, and Ethics Problems**

The commission's executive director, Lee Warner, resigned on August 20, 2004, effective January 7, 2005, apparently in lieu of termination by the commission. He was allowed to resign under the following conditions:

- Full salary during the period between August 20, 2004 and January 7, 2005, although not allowed to work at the commission's offices in Montgomery.
- Consulting services to be provided by Warner for the first eight weeks after August 20, 2004,
- Placed on annual leave for the remainder of the period until the effective date of resignation.

Under Warner's direction, questionable personnel actions and related expenditures occurred.

- In June 2002, Warner hired Persijs Kolberg, Ph.D. as site director for Fort Morgan at above the minimum salary for the position. Kolberg was also provided a state car and a rent-free house at Gulf Shores purchased by the commission and built in 2000. Housing was not provided for the previous site director.
- Myers Brown was hired as curator for the Pond Spring (Joe Wheeler) historical site. Upon his hiring, Brown was paid \$1,250 for moving expenses from the account of the Joe Wheeler Foundation, a separate non-profit organization. Melissa Beasley, site manager for the Pond Spring site and a commission employee, wrote a letter instructing the accountant for the Joe Wheeler Foundation to pay Brown for his moving expenses. Brown was hired by the commission as a merit system employee whose pay and benefits are specified by law and do not include moving expense allowances.
- Lisa Lichtfuss was hired by Warner in July 2003 to serve as fund-raiser for the commission and for the Alabama Historical Commission Foundation, Inc. Lichtfuss was paid an annual salary of \$78,999.96 from commission funds, plus a

monthly stipend of \$1,500 from the foundation to cover housing and travel expenses. Lichtfuss earned annual and sick leave and compensatory leave when her recorded work hours exceeded normal working hours. Lichtfuss was allowed to reside at her home in Tupelo, Mississippi. She normally reported to work by mid-day each Monday and usually left by mid-day each Thursday. Her travel time was recorded as work time. Warner also routinely allowed Lichtfuss to work from her home in Mississippi. Lichtfuss reported directly to Warner, and we found no record of her job duties for the commission. She admitted that she worked solely for the foundation rather than for the commission.

- Warner authorized a commission employee, Cheryl Sneddon to be absent from work for a period of seven weeks while on a personal trip to China without using annual leave. She was granted “administrative leave”, which allows an employee to be paid but does not require the employee to use personal leave. According to the State Personnel Department, administrative or additional leave must be specifically authorized by the governor. The commission did not obtain the governor’s authorization.
- Warner hired Mark Driscoll as the Historic Sites Director. Subsequently, Driscoll’s wife, Janet Driscoll, was contracted to perform graphic design work for the commission. Mrs. Driscoll performed graphic design work on the *Handbook for Owners of Alabama’s Historic Houses* and was paid \$2,360. She also designed page grids and formatting for the Alabama Historic Inventory Manual for \$499.
- The Goat Hill Museum gift shop was managed by a contract employee who earned approximately \$42,000 per year, an excessive salary for a small gift shop manager when compared to similar types of retail operations at other state agencies.

### **Recommendations**

The commission should operate within the scope of its legal authority as a state agency when hiring and terminating employees. Additional benefits and compensation should not be provided to merit system employees of the commission that are not specifically authorized by law.

The commission should reduce the annual leave balance for Cheryl Sneddon for the hours she was absent from work during her personal trip to China.

The commission should not hire or place employees in positions for which a conflict of interest may exist. The commission should ensure that transactions and contracts with others do not create or result from a conflict of interest on the part of its employees or commission members.

### **Current Status**

In a May 6, 2005 response to the Examiners of Public Accounts, the commission made the following replies to these findings:

- **Lee Warner's resignation** – "...the decision to resign was made by Dr. Warner with the conditions of his resignation being made by several commission members working with Dr. Warner and counsel in the Attorney General's office, as well as consultation with State Personnel". The reply further states the commission believed their actions were proper and in the best interest of the state.
- **Purchase of house at Gulf Shores** – "...our representative at the Attorney General's office states that our authority at Ft. Morgan extends to activities "necessary and convenient" to our purpose, and he believes that the purchase of the house is convenient to our purpose. The commission will, however, re-evaluate our policy and this purchase in light of your concerns."

Elizabeth Brown, interim executive director, stated on June 28, 2005 that Dr. Kolberg was one of the employees to be laid off by the commission effective July 8, 2005. She further stated that Dr. Kolberg would vacate the residence and the commission would decide whether to rent or sell the property.

A report of June 30, 2005 in The Birmingham News quotes Commission Chairman Bill Drinkard as saying, "We'll have to trim programs, so what we're trying to do is to try to divest ourselves of properties that we don't think we need." The report further indicates the Gulf Shores home tops a list of properties to be sold.

- **Payment of moving expenses for Myers Brown** – The commission stated it now understands that it is improper to provide some state employees with benefits that are not provided to all state employees, whether or not that benefit is provided with state money. The commission indicated it would ensure that it does not occur again.
- **Hiring of Lisa Lichtfuss as Development Director** - The commission stated, "Ms. Lichtfuss had no reason to believe that her hiring was not proper. She performed the work that she was asked to do – Develop a plan for a foundation to support commission activities and services. The foundation asked Ms. Lichtfuss to develop a plan for what could be done in lieu of a full-blown fund-raising campaign. A copy was provided to the examiners at their request."

There is no indication in the reply of remediation steps to be taken by the commission to prevent a reoccurrence of this situation in the future.

- **Granting of administrative leave to an employee to travel to China**, the commission indicated it now understands that only the governor can grant administrative leave. Subsequent to the finding, the commission obtained an after-the-fact approval from the governor for the employee's travel to China as work-related. This approval removes the necessity for the commission to adjust the personal leave balance of the employee.
- ***Hiring of a staff member's wife for design work projects*** - the commission stated, "The selection of Driscoll Design, Inc. was conducted using approved state procurement procedures. Driscoll Design, Inc. was the low bidder on both projects. Neither of the persons directing the projects are supervised by Mr. Driscoll, and do not work in the Historic Sites Division." The commission further indicated that their attorney stated to them that this was not a violation of the ethics law, and that no impropriety existed. The commission stated that although this may have been proper, they would seek to avoid even the appearance of impropriety in the future.

#### **Finding #2 - Historic Preservation Investment Fund Cash Balance Reconciliation**

The commission did not always notify the State Treasurer to transfer funds from the commission's investment fund bank accounts when transfers from the investment fund to the commission's operating fund were recorded in the accounting records. Consequently, the State Treasurer made payments over a ten-year period from other state funds that should have been made with amounts transferred from the commission's investment fund bank accounts. As a result, the commission's investment fund bank accounts owe the State Treasury \$1,759,503.59

#### **Recommendation**

The Alabama Historical Commission should implement procedures to ensure that the correct amount of cash and investments are recorded in the State of Alabama Central Accounting System and included in the Alabama Historical Commission's cash balances in the State Treasury. These procedures should include notifying the State Treasurer of all transfers needed by the Alabama Historical Commission and reconciling the accounting records and bank accounts monthly. The Alabama Historical Commission and the State Treasurer should immediately transfer \$1,759,503.59 from the bank account to the State Treasury to repay the State Treasury through September 30, 2004.

**Current Status** - The \$1,759,503.59 has been transferred from the Fund #785 investment bank accounts to the State Treasury.

**Finding #3 – Conditions at the Pond Spring (Joe Wheeler Home) Historic Site and at Other Sites**

Examiners visited three of the commission's historic sites and found them in poor condition. Photographs of the Pond Spring site (Joe Wheeler home) taken during the examination are presented below.

**Recommendation**

The Alabama Historical Commission should implement adequate procedures in order to ensure the preservation of historic sites and artifacts under its management. Artifacts in danger of being lost should be placed in a protected, safe area as soon as possible

**[Pond Spring Site]**

The Pond Spring site is closed because of disrepair and deterioration. The artifacts at the Pond Spring site are in jeopardy of being lost. The Wheeler house, which is the main house on the site, was closed on January 1, 2000 because it was unsafe for tours.

**The following photographs, taken in 2004, show some of the deterioration at the Pond Spring location.**



**SCAFFOLDING SUPPORTING SECOND FLOOR ROOF AND PORCH OF POND SPRING HOME**



**ENTRANCE AT BACK OF POND SPRING HOME**



**COLLAPSING BARN AT POND SPRING SITE**



**DAMAGE TO CEILING INSIDE POND SPRING HOME**



**DAMAGE TO CEILING INSIDE POND SPRING HOME**



## **DAMAGE TO CEILING INSIDE POND SPRING HOME**

### ***Current Status***

According to staff, the commission has been making plans for some time to move artifacts in jeopardy of loss at the Pond Spring location to a more secure, climate-controlled environment for preservation purposes. According to the commission's May 5, 2005 meeting minutes, the transfer of artifacts to an off-site storage facility was expected to occur in mid-June, once necessary modifications were made to the selected storage site. Weatherproofing, upgrades to the security system, and additions to the climate control system were necessary before the collection could be transferred. As of July 11, 2005, Elizabeth Brown, interim executive director, indicated that the following progress has been made at the Pond Spring location since March 2005:

- “Substantial completion” according to Alabama Building Commission procedures has been accomplished in regard to the replacement of the log barn roof which included installing gutters and repairing a leak in the cook's house
- The electrical work which was abandoned by the previous contractor was started. Drawings are scheduled to be completed on July 29, 2005 at which time the commission will proceed with the bidding and completion of the work.
- An architect has been selected for the phased restoration of the Wheeler and Sherrod Houses.

Brown also stated that the Pond Spring collection has not been moved. The commission is in the process of pricing various moving companies to move the collection to storage.

A subsequent discussion with commission employee Mark Driscoll on July 13, 2005 indicated that new drawings are needed to insure compliance with updated electrical codes and to include the work done prior to abandonment by a former contractor. Driscoll also stated another architect was selected because the restoration of the two main houses is a new project. An original contract was previously effected to bring water and electricity to the site and to restore the log cabin, cook's house, log barn, and the ice house.

### **[Fort Morgan Site]**

The Fort Morgan site had buildings in need of repair and regular maintenance. The site suffered serious damage from Hurricane Ivan which had not been repaired, including a destroyed ferry dock and landing. The Examiners of Public Accounts compliance examination report states in regards to the Fort Morgan site, "The staff has removed the water from the fort and they are in the process of removing mud from the building. The steps at the bakery have been recovered and repaired. The bathrooms are now repaired and sanitized. The fences have now been fixed."

#### ***Current Status***

The commission mentions in the minutes of its October 22, 2004 meeting that the commission's staff are continuing meetings with the Federal Emergency Management Agency (FEMA) to discuss damage to historical sites from Hurricane Ivan. Because Fort Morgan was one of the hardest-hit properties owned by the commission, this location has received the most attention from FEMA.

The commission voted on February 2, 2005 to contract with Hornblower Marine Services for operation of the ferry to the Fort Morgan site. However, the commission was unable to raise enough money to repair or reconstruct the ferry landing so that ferry operations to the fort could be resumed. At its May 4, 2005 meeting, the commission voted to transfer the operation of the ferry to the Alabama Department of Transportation (ALDOT).

A report of June 21, 2005 in the Mobile Register states, "...ALDOT took over the ferry from the Alabama Historical Commission in May, in no small part because of pressure from Gov. Bob Riley. The ferry had been out of action since Hurricane Ivan destroyed the Fort Morgan dock nine months ago, but last week it was running again."

### **[Teague House (commission headquarters)]**

The Teague house needs painting, some of the bricks surrounding the house have fallen down, the fence is broken and the steps are slippery and in need of painting. The upstairs balcony is also in need of repair. We attended a meeting of the executive committee of the commission in the historic carriage house located at the rear of the Teague House property in Montgomery, where we noticed unrepaired water damage and several large buckets placed on the floor in the carriage house to catch water from the leaking roof.

#### ***Current Status***

In a May 6, 2005 response to the Examiners of Public Accounts, the commission stated that “at Commission headquarters, the Commission restoration staff has completed the roof replacement to the Carriage House, and blinds (shutters) are being repaired on the Teague House in preparation for repainting the house exterior. The back porch is repaired and painted.”

The examiners noted during the June 27 – 29 workdays that the back porch had recently been painted, but that several of the shutters on the back of the house had not been repaired, and the corners and slats of several shutters were severely damaged and rotting. The front door of the Teague House was still inoperable, and a sign directed all commission visitors to enter through the rear of the property. The brick and iron fencing along the sidewalks on South Perry and High Streets was crumbling and sagging, and several decorative elements had fallen from the eaves of the building’s façade. The house’s second-floor balcony was also in need of repair, as sagging was obvious from the street.

In a conversation with the commission’s executive director, Elizabeth Brown on July 11, 2005, Brown stated that the shutters had not been addressed before the late-June workdays, but that the shutters were currently off the house and were being repaired for painting. Brown also stated that the carriage house roof and the Teague House back porch had been repaired during late May and were in proper order. On subsequent visits to the commission, Examiners noted that approximately five shutters had been removed from the High Street side of the Teague House, but that no shutters present on the front and back of the house during the June 27 – 29 workdays had been removed.

#### **Finding #4 - Alabama Historical Commission Foundation**

On November 1, 2001, three commission members established the Alabama Historical Commission Foundation, Inc. as a separate non-profit organization to provide financial and program support to the commission. The foundation has received substantial support from the commission but has not provided any substantial benefits or support to the commission. The foundation received donated and other public funds that normally would have been received by the commission and deposited into the State Treasury.

All of the commission's executive committee members are foundation board members. Three of the commission's employees perform foundation business on state time, and the foundation's computer is housed in the main office of the commission. The foundation's incorporation fee was paid by commission employee Lisa Jones. The commission subsequently reimbursed Ms. Jones with state funds for the amount of the incorporation fee.

The commission has directed what appear to be public funds from outside sources to the foundation. Foundation funds are not subject to the limits and restrictions placed upon public funds, and the foundation paid expenses that would not be allowable if paid from public funds.

#### **Recommendation**

Donations and other income made payable to the commission should not be given to the foundation and deposited in the foundation's bank account. The Alabama Historical Commission should ensure that all employees that are hired as state employees perform work for the commission and that no employee does work for another entity while on state time.

#### **Current Status**

Upon inquiry, Elizabeth Brown stated that the foundation still has two (2) laptop computers, one (1) desktop computer, and one (1) all-in-one printer housed in the main offices of the commission, and the commission has the foundation's permission to use these machines as needed. She further stated that no employees of the commission were performing foundation work on state time, and that all foundation information and files had been erased from the foundation computers kept in the commission's offices. Brown indicated that the Alabama Historical Commission and the Alabama Historical Commission Foundation still enjoyed a strong working relationship. Brown also stated that the foundation had not acquired a staff to perform the foundation's daily business activities.

### **Finding #5 — Fort Morgan Ferry Project**

The commission plans to acquire and operate a ferry boat from Fort Morgan, which does not appear consistent with the commission's statutory mission of preserving historic properties. The ferry landing at Fort Morgan was destroyed by Hurricane Ivan. The ferry landing must be repaired or rebuilt before a ferry can be operated from the site. Before Hurricane Ivan, the commission was guaranteed at least \$30,000 per year from a private ferry operator who utilized the ferry landing through a concession contract.

### **Recommendation**

The commission should seek legislation that specifically authorizes activities such as the purchase, ownership, and operation of a ferryboat, which is unrelated to its current mission of preserving historic properties.

### **Current Status** –

Operation of the Fort Morgan ferry has been transferred to the Alabama Department of Transportation.

### **Finding #6 - Improper Use of Refunds Against Disbursements**

The commission improperly coded money received from merchandise sales as refunds against disbursements rather than as sales receipts in order to reduce recorded disbursements and allow the commission to exceed its budget for purchase of resale merchandise. This practice effectively caused an unapproved amendment to the commission's operating budget, and therefore, non-compliance with the state's Budget Management Act. The practice also caused understatements in the recorded sales of merchandise and in recorded purchases of merchandise for resale.

### **Recommendation**

Revisions to the Alabama Historical Commission operating budget should be made according to procedures outlined in the Department of Finance Fiscal Policy and Procedures Manual. Proceeds from sales should be correctly classified in the accounting records.

### **Current Status**

The commission implemented the recommendations subsequent to the examination period.

### **Finding #7 — Improper Deposits of Routine Operating Receipts**

During the examination period, money collected routinely by the commission (admission fees, etc.) to be used for operations was improperly deposited into the commission's Historic Preservation Investment Fund #785 rather than into the commission's operating Fund #365. This condition was also reported in previous examinations. As a result, numerous transfers were required to move money from Fund #785 to Fund #365 to pay operating expenses. Deposit of operating funds into the Historic Preservation Investment Fund #785 is not consistent with the purpose established by law for the fund.

#### **Recommendation**

The Alabama Historical Commission should deposit all revenues that will be used for operations into Fund #365. Only donations, gifts, bequests, or other similar revenues or grants from private sources that are specifically intended for investment should be deposited into Fund #785.

#### **Current Status**

The commission has taken steps to ensure that all revenues that will be used for operations are deposited into Fund #365.

### **Finding #8 - Minutes of Commission Meetings**

Attorney General Opinion 99-153 advises that minutes should be taken at meetings even when no business is conducted. Attorney General Opinion 90-045 also advises that complete and accurate minutes must be kept of meetings. The minutes reviewed did not properly reflect the actions of the commission. The minutes were not complete and were vague. In some instances, the business conducted during the commission meetings was not determinable.

#### **Recommendation**

The Alabama Historical Commission should ensure that complete and accurate minutes are kept of all commission meetings.

#### **Current Status**

The commission implemented the recommendation subsequent to the examination period

### **Finding #9 — Incorrect Leave Records and Payments**

In a sample of 25 employees, there were two instances where the employee's leave progression start date was in error due to not adjusting the date for part-time work. This date determines the rate at which annual leave is earned. In both instances the error caused employees to earn the incorrect amount of leave.

There was one instance where an employee retired and did not receive payment for ½ of her sick leave balance at retirement, to which she was entitled.

One employee's separation pay was not correctly allocated between regular hours worked and fringe benefits, resulting in an error in the accounting records.

### **Recommendation**

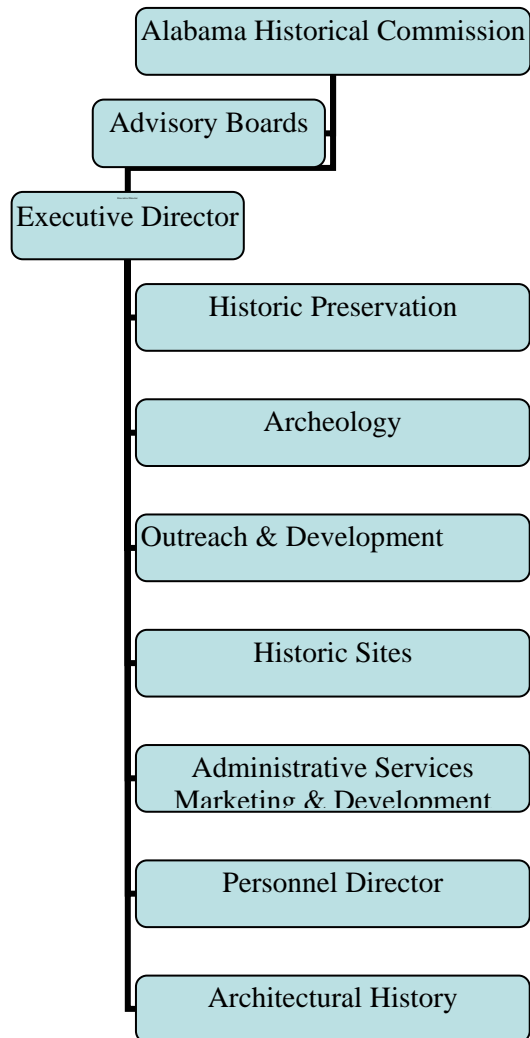
The Alabama Historical Commission should ensure that the leave progression start date for employees is correctly recorded in state's human resources accounting system and that the rate of annual leave being earned by employees is accurate.

The Alabama Historical Commission should ensure that the correct amount of leave is paid to employees who are terminated or retired during the examination period and that the separation pay is properly recorded and allocated between regular hours worked and fringe benefits.

### **Current Status**

These errors were communicated to appropriate personnel and were corrected.

## ORGANIZATION



## PERSONNEL

The commission has 75 employees hired through the state's merit system (after lay-offs effective July 8, 2005). In addition, the commission employs an executive director, the State Archeologist, and the Special Projects Coordinator outside the merit system.

## FINANCIAL INFORMATION

The commission utilizes a single fund in the State Treasury in which to record its operating transactions. The commission also utilizes a separate short-term investment fund from which transfers are made to the operating fund as needed. The State Treasurer maintains separate bank accounts for balances in the investment fund. Balances in the bank accounts are invested by the State Treasurer, and the income is reserved for the commission. In addition to other funds received during its operations, the commission receives transfers from the state's General Fund and income from investments of funds arising from the settlement of litigation involving the Transcontinental Gas Pipe Line Corporation (Transco). Transco settlement funds are invested by the Retirement Systems of Alabama.

### Schedule of Operating Receipts, Disbursements, and Balances

(Operating Fund)

**October 1, 2000 through September 30, 2004**

<b><u>Receipts</u></b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Transfers from General Fund	\$ 2,983,000.00	\$ 4,094,000.00	\$ 4,212,000.00	\$ 4,667,000.00
Transfers from Invested Funds	1,079,664.00	2,490,000.00	3,320,000.00	2,544,478.37
Other Receipts	2,804,015.91	2,091,345.63	1,760,378.57	1,055,069.00
<b>Total</b>	<b>6,866,679.91</b>	<b>8,675,345.63</b>	<b>9,292,378.57</b>	<b>8,266,547.37</b>
<b><u>Disbursements</u></b>				
Personnel Costs	3,719,996.42	3,651,124.64	3,274,230.79	2,687,375.42
Employee Benefits	1,129,076.93	1,078,524.27	935,665.19	755,868.88
Travel In-State	29,535.75	78,938.78	79,787.80	76,233.87
Travel Out-of-State	16,664.05	43,239.29	46,274.18	36,406.64
Repairs and Maintenance	77,963.27	185,956.84	120,820.01	114,035.96
Rentals and Leases	26,034.87	46,209.05	35,866.40	35,802.99
Utilities and Communications	357,456.39	390,989.10	393,824.85	369,076.41
Professional Services	468,757.20	673,032.00	745,080.91	429,854.79
Supplies, Materials and Operating Exp.	384,731.81	485,331.63	454,001.24	423,412.63
Transportation Equipment Operations	39,681.62	42,572.82	35,224.72	41,235.76
Grants & Benefits	283,887.42	996,738.02	1,176,258.84	1,263,772.97
Capital Outlay	417,516.25	800,545.47	2,487,429.50	1,564,278.83
Transportation Equipment Purchases		12,597.40	30,705.93	172,055.40
Other Equipment Purchases	33,427.76	76,152.52	111,000.30	89,363.01
<b>Total</b>	<b>6,984,729.74</b>	<b>8,561,951.83</b>	<b>9,926,170.66</b>	<b>8,058,773.56</b>
Excess (Deficiency) of Receipts Over Disbursements	(118,049.83)	113,393.80	(633,792.09)	207,773.81
Cash Balance at Beginning of Year	626,071.53	512,677.73	1,146,469.82	938,695.37
Cash Balance at End of Year	\$ 508,021.70	\$ 626,071.53	\$ 512,677.73	\$ 1,146,469.18

**9/30/04 Balance - Short-term Investment Fund - \$214,839.47**

Operating Receipts Vs Operating Disbursements (Chart)  
Historic Preservation Fund



## Appendices

### Advisory Committee Membership

The commission's enabling establishes a Board of Advisors to the Alabama Historical Commission which shall consist of no less than 15 persons. Each of the below listed societies, organizations, individuals, commissions and institutions shall have the authority to name one member of the board of advisors and shall submit the name of the person so appointed to the chairman of the commission prior to the annual meeting of the commission:

- 1) The Alabama Division, United Daughters of the Confederacy
- 2) The Alabama Society of the Daughters of the American Revolution
- 3) The Alabama Society of the Daughters of the American Colonists
- 4) The Mobile Historic Development Commission
- 5) The National Society of the Colonial Dames of America in the State of Alabama
- 6) The Huntsville Historic Preservation Commission;
- 7) The Alabama Department of the Sons of Confederate Veterans
- 8) The Gorgas Memorial Board
- 9) The Hobson Memorial Board
- 10) The Cahaba Advisory Committee
- 11) The LaGrange Historical Commission
- 12) The Fort Morgan Historical Commission
- 13) The USS Alabama Battleship Commission
- 14) The Tennessee Valley Historical Society
- 15) The Montgomery Antiquarian Society
- 16) The Helen Keller Property Board
- 17) The Birmingham Historical Society
- 18) The Board of Trustees of the Mobile Museum Board
- 19) The Board of Trustees of the Montgomery Museum Board
- 20) The head of the department of history and the head of the department of archaeology of each accredited, four year, degree granting university and college located within the State of Alabama
- 21) The John H. Forney Historical Society
- 22) The Tuscaloosa County Preservation Society
- 23) The Blount County Historical Society
- 24) The Chattahoochee Valley Historical Society
- 25) The Dale County Historical Society
- 26) The Etowah Historical Society
- 27) The Hale County Historical Society
- 28) The Huntsville Historical Society
- 29) The North Alabama Historical Society
- 30) The Old South Historical Society
- 31) The Pike County Historical Society
- 32) The Society of Pioneers of Montgomery
- 33) The Eufaula Heritage Association
- 34) The Marengo Historical Society
- 35) The Historic Mobile Preservation Society
- 36) The Alabama Society, Sons of the American Revolution

- 37) The Alabama Society, Southern Dames of America
- 38) The Huguenot Society in Alabama
- 39) The Alabama Society of the Colonial Dames of the 17th Century
- 40) The Coweta Memorial Association
- 41) Any other local or regional historical society duly recognized by the commission which may exist or which may be created subsequent to August 19, 1966

The commission may further add to the advisory board such other civic, charitable and patriotic organizations as it may from time to time deem to be to the best interest of the commission.

Other advisory committees established by the commission's statutes include:

- The Cahawba Advisory Committee, composed of 16 members, 15 of whom shall be appointed by the Governor. The Judge of Probate of Dallas County shall be the sixteenth member but shall be a member ex officio and shall not be entitled to a vote on the advisory committee. Members of the advisory committee shall be appointed so that each congressional district is represented by one appointed member on the advisory committee; except, that the congressional district in which Cahawba is situated shall be represented by eight appointed members, five of whom shall be residents of Dallas County and three of whom shall be from some other county in the congressional district. The membership of the advisory committee shall reflect the racial, ethnic, gender, urban/rural, and economic diversity of the state.
- The Alabama Council on Historic Pilgrimages, to be established under the auspices of the Alabama Historical Commission with the council having the purpose of coordinating the efforts of each of the existing and proposed historic pilgrimages in the State of Alabama, whether publicly or privately sponsored. The Council on Historic Pilgrimages shall consist of seven individual members, one being appointed from each of the six districts of the state as established by the Alabama Historical Commission and one being a representative of the Alabama Historical Commission. Additionally, there shall be two ex officio individual members, one representing the Alabama Travel Council and one representing the State Bureau of Tourism and Travel.
- The Fort Tombeckbee Historical Advisory Board to be appointed by the Governor for the purpose of advising the Alabama Historical Commission on the acquisition, maintenance, and protection of certain properties and objects of historical interest at Fort Tombeckbee in Sumter county. This advisory board shall be composed of three members who shall serve without compensation. The advisory board advises the Alabama Historical Commission in acquiring title, possession or control of such properties and also of objects of historic interest at Fort Tombeckbee.

## Compliance Examination

**State of Alabama**  
Department of  
**Examiners of Public Accounts**

Telephone (334) 242-9200  
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**Ronald L. Jones**  
**Chief Examiner**

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*Location:*  
Gordon Persons Building  
50 North Ripley Street, Room 3201  
Montgomery, AL 36104-3833

Honorable Ronald L. Jones  
Chief Examiner of Public Accounts  
Montgomery, Alabama 36130

Dear Sir:

Under the authority of the *Code of Alabama 1975*, Section 41-5-14, we submit this report on the Alabama Historical Commission, State of Alabama, for the period October 1, 2001 through September 30, 2004.

### SCOPE AND OBJECTIVES

This report encompasses the results of an examination of the Alabama Historical Commission (the "Commission"). The objective of the examination was to determine whether the commission was in compliance with applicable laws and regulations of the State of Alabama.

### CONTENTS OF REPORT

This report includes the following segments:

Report to the Chief Examiner - contains items pertaining to the function or purpose of the commission operations, state legal compliance, and other matters.

Additional Information - contains information pertaining to the commission Members (Exhibit 1).

## **OVERALL RESULTS OF EXAMINATION**

Significant items noted during our examination are listed in summary form in this section. Details of these items are further discussed in the *Findings and Recommendations* section of this report.

The commission allowed Executive Director Lee Warner to resign on August 20, 2004, effective January 7, 2005. It appears that his resignation was in lieu of termination of his employment by the commission. Mr. Warner was allowed to receive his full salary during the period between August 20, 2004 and January 7, 2005, although he was not allowed to work at the commission's office in Montgomery. Under Mr. Warner's direction, several other questionable personnel actions and related expenditures occurred.

The commission's accounting records remained out of balance with the State Comptroller and State Treasurer. This was reported in previous examinations, and we recommended that the commission's accountants reconcile the accounting records to those of the State Treasurer and State Comptroller. The commission's accountants attempted to reconcile the records and were unable to do so; therefore, at the request of the commission accountants and the State Treasurer, we performed a complete reconciliation of the commission's accounting records for the past ten years. As of September 30, 2004, the commission owed the State Treasury \$1,759,503.59, which represents money deposited in separate bank accounts that should have been transferred to the Historic Preservation Investment Fund #785 in the State Treasury to cover disbursements made by the commission.

We visited three historic sites maintained by the commission, including the Teague House where the commission's offices are located, the Pond Spring site in North Alabama (Wheeler home), and the Fort Morgan site. The sites we visited were in need of numerous repairs and restoration work. The Pond Spring site is closed because of its condition of disrepair and deterioration. Hurricane Ivan resulted in damage to several Commission historical sites and assets that have not yet been repaired, including destruction of the ferry dock and landing at Fort Morgan.

On November 1, 2001, three Commission members established the Alabama Historical Commission Foundation, Inc. as a separate non-profit organization to provide financial and program support to the commission. Instead, the foundation has received financial and program support from the commission and has not provided any substantial benefits or support to the commission. The foundation received donated and other public funds that normally would have been received by the commission and deposited into the State Treasury.

Although Hurricane Ivan destroyed the ferry dock and landing, and although a private ferry has operated between Fort Morgan and Fort Gaines for years, providing guaranteed income of \$30,000 per year or more to the commission under a concession contract, the commission is in the process of purchasing a second ferry to be owned and operated by the commission. The commission is planning to spend more than \$3 million to restore the ferry landing and purchase a ferryboat. Acquisition and operation of a ferryboat does not appear to be a historic preservation activity consistent with the statutory mission of the commission.

## BACKGROUND INFORMATION

### General Information

The Alabama Historical Commission operates under the provisions of the *Code of Alabama 1975*, Sections 41-9-240 through 41-9-262, as amended for the preservation of buildings and sites with historical, archaeological, or architectural significance. The commission consists of twenty members, of which seven are ex officio. These officials include the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Director of the Department of Archives and History, the Director of the State Bureau of Tourism and Travel, the commissioner of Conservation and Natural Resources, and the Director of the technical staff of the Alabama Building Commission. The other thirteen members are appointed by the Governor, and represent state universities, the Alabama Council of the American Institute of Architects, the Alabama Historical Association, the Alabama State Chamber of Commerce, the Alabama Farmers Federation, the Alabama Archaeological Society, and the state at-large. These members are appointed based on a demonstrated interest in and concern about the preservation of Alabama history. In addition to the twenty members, the Chairman of the Restructured Historic Chattahoochee Commission serves as an ex officio policy making member of the commission. Commission members serve six-year terms. The commission has 109 employees hired through the State Merit System and is authorized by the *Code* to have three non-merit employees. These include the Executive Director, State Archaeologist, and Special Projects Coordinator.

The commission's headquarters are at the historic Teague and Rice/Semple Haardt Houses located at 468 South Perry Street in Montgomery. Additional historical properties administered by the commission include Belle Mont, Bottle Creek Mounds, Cahawba Park, John Tyler Morgan House, Confederate Memorial Park and Cemetery, Fendall Hall, Dr. Francis Medical Museum, Gaineswood, Magnolia Grove, Pond Springs, Truss-Watson House, Tardy Cottage, Fort Mims, Fort Morgan, and Fort Toulouse. The commission also owns the Victor Tulane Building and South Perry Street Apartments.

The commission operates from two special revenue funds, the "Alabama State Historic Preservation Fund" (Fund #365), established in the State Treasury by the *Code of Alabama 1975*, Section 41-9-255, and the "Alabama Historic Preservation Investment Fund" (Fund #785) authorized by the *Code of Alabama 1975*, Section 41-9-249(7c). The "Alabama Cultural Resources Preservation Trust" was created in 1992 for the purpose of implementing the settlement of the Transco litigation. The Employees' Retirement System of Alabama acts as the investment adviser and custodian of this fund for the commission. Interest income earned by the "Alabama Cultural Resources Preservation Trust" for the 2001-2002, 2002-2003 and 2003-2004 fiscal years were \$673,249.24, 338,264.21, and \$186,738.11, respectively. Periodically, the interest earned in this fund is transferred to Fund #365 to be expended in accordance with the Transco litigation settlement.

The commission's expenditures during the period are shown in the table below.

Alabama State Historic Preservation Fund (365) Expenditures October 1, 2001 through September 30, 2004			
	2004	2003	2002
Personnel Costs	\$ 3,719,996.42	3,651,124.64	\$ 3 ,274,230.79
Employee Benefit	1,129,076.93	1,078,524.27	935,665.19
Travel, In-State	29,535.75	78,938.78	79,787.80
Travel, Out-of-State	16,664.05	43,239.29	46,274.18
Repair and Maintenance	77,963.27	185,956.84	120,820.01
Rentals and Leases	26,034.87	46,209.05	35,866.40
Utilities and Communication	357,456.39	390,989.10	393,824.85
Professional Services	468,757.20	673,032.00	745,080.91
Supplies, Materials, and Operating	380,464.32	488,913.52	454,442.15
Transportation Equipment Operation	39,681.62	42,572.82	35,224.72
Grants and Benefits	283,887.42	996,738.02	1 ,176,258.8
Capital Outlay	417,516.25	800,545.47	2 ,487,429.5
Transportation Equipment Purchase	-	12,597.40	30,705.93
Other Equipment Purchases	33,427.76	76,152.52	111,000.30
Miscellaneous	(1,079,664.00)	(2,490,000.00)	(3 ,320,000.0
<b>Total Expenditures</b>	<b>\$ 5,900,798.25</b>	<b>6,075,533.72</b>	<b>\$ 6 ,606,611.5</b>

The financial statements of the commission are included in the State of Alabama Comprehensive Annual Financial Report prepared annually by the State Comptroller.

We compared a sample of nonconsumable personal property in the custody of the Alabama Historical Commission with the property records maintained by the Property Inventory Control Division of the State Auditor's Office. The term "nonconsumable personal property" as used herein consists primarily of office furniture and equipment, vehicles, and other items necessary for the operations of the agency and does not include historical items in the custody of the commission. There were no discrepancies noted during the comparison. The Property Inventory Control Division of the State Auditor's Office performed a physical inventory during the 2003-2004 fiscal year of the commission's property valued at \$500 or more and reported that all items were located. The property total at September 30, 2004 was \$2,579,487.72 of which \$279,871 is attributable to 22 vehicles. Of the vehicle total, there are three Chevrolet Tahoe Sport Utility Vehicles with a cost of \$74,033, which are used by employees working in the main offices in Montgomery with the remaining \$205,838 being attributed to 19 other vehicles.

### **Overview of Historical Sites**

The Alabama Historical Commission owns and maintains 21 historic sites throughout the State of Alabama. A consultant, Economics Research Associates, was paid more than \$350,000 to assess and rank 17 of the 21 properties. The consultant prepared an *Economics Research Associates (ERA) Phase I Report: Opportunities Analysis for AHC Properties; Analysis of Programs in Other States* issued to the commission in 2001. This ranking/prioritization of the properties currently serves as the basis to determine which properties should have priority when the commission allocates available resources for preservation. Among the factors considered by the consultant were the properties' business potential and interpretive potential. The business potential included factors related to the potential for increased tourism, uses for other purposes, income potential, and potential for private or non-profit funding and support. The interpretive potential addressed the properties' potential for preserving and interpreting the unique cultural and historical resources of the State.

Priority 1 properties were those properties that scored high in both the business potential and interpretive potential categories. Priority 2 properties were those that had a moderate business potential and high interpretative potential. Priority 3 properties were those that scored low or had a moderate business potential and low interpretative potential. In the ERA report the consultants' recommendations regarding ownership, management, and interpretation of the properties reflect the level of priority. According to the report for Priority 1 properties, the commission should retain ownership and responsibility for management and operation; the property should be considered for priority resource investment. For priority 2 properties, the commission should retain ownership and responsibility for management and operation; investment should be made as resources become available. For Priority 3 properties the commission should retain ownership of the property, but should seek partners for operation, interpretation and/or other activities. Alternatively, the commission should seek to transfer the property to an appropriate organization.

An overview of the commission properties, and the Economics Research Associates' ranking of these properties are included in the following paragraphs.

### Alabama State Capitol

The Alabama State Capitol, constructed in 1851 and restored in 1992, is a National Historic Landmark in downtown Montgomery and is in active status as a state government office building. The commission has 15 permanent staff members located at the Capitol. Four additional staff members are employed in the Goat Hill Museum gift shop. The Capitol building is a priority 1 property according to the ERA report prepared for the Alabama Historical Commission.

### Belle Mont

The Belle Mont home, circa 1830, and outbuildings are located on approximately 35 surrounding acres in Colbert County. With limited hours of operation and one staff member who is also the site director at Pond Spring, annual visitation remains less than 500. As one of the state's first great plantation houses, it is also Alabama's finest example of Jeffersonian Palladian architecture. This is considered a priority 2 property.

### Bottle Creek

Bottle Creek is a relatively inaccessible site located in Baldwin County. It is a historically significant site encompassing 157 acres and an assortment of Native American mounds and artifacts. Visitation to the undeveloped site is discouraged, and no regular staff work on site, though it is patrolled by a Biologist/Wild Life Officer employed with the Alabama Department of Conservation and Natural Resources (DCNR) for the purposes of security. The commission pays a portion of this employee's salary. This property is considered a priority 3 property.

### Confederate Memorial Park

Confederate Memorial Park encompasses 102 acres and is both a historic site as well as a venue for public and recreational activities in Chilton County. It is the site of the state's only Home for Confederate Veterans (1902-1939), and while this home and its support buildings are no longer present, the park does include a historic archaeological component at the building sites, as well as a cemetery and museum. Construction on a new museum and visitors center is underway. The commission has five permanent staff located at the facility, which is toured or used by approximately 40,000 visitors annually. This is considered a priority 3 property.

### *Dr. Francis Medical and Pharmaceutical Museum*

The Dr. Francis Medical and Pharmaceutical Museum is located in a commercial parking area in Jacksonville, Alabama. It has been relocated from its original site. While the museum is not permanently staffed, a volunteer affiliated with the Jacksonville Heritage Association oversees the opening of the museum each Saturday. Annual visitation is still extremely low. This is considered a priority 3 property.

### *Fendall Hall*

The Fendall Hall property includes a circa-1860 house located on approximately 4 Vi acres. Its hand-painted murals inside are nationally recognized as being among the finest in the nation. The site, located in Barbour County, receives less than 4,000 visitors annually, and two permanent staff members are located at the site. Volunteers give tours three days a week. This is considered a priority 3 property.

### *Fort Mims*

Fort Mims is maintained as a park with a picnic pavilion including tables and a walking path in the shape of the 1813 fort on the five-acre site in Baldwin County. The park is not staffed, and annual visitation is estimated at less than 200. The fort commemorates the 1813 battle and massacre that was a chief cause of the Creek War. This is considered a priority 3 property.

### *Fort Morgan*

The Fort Morgan site, located in Baldwin County, encompasses nearly 500 acres and includes multiple historic and modern structures. Fort Morgan itself, completed in 1834, first made history during the Civil War for its role in the Battle of Mobile Bay, but was again occupied by the U. S. Military during the Spanish American War and both World Wars. Eight permanent staff members maintain and manage the site. Annual visitation is estimated at approximately 90,000 visitors. This is considered a priority 1 property.

### *Fort Toulouse/Fort Jackson*

The Fort Toulouse/Fort Jackson site in Elmore County includes 160 acres and multiple modern and reconstructed buildings and facilities, as well as Native American, French, and American archaeology, in a park setting. Native Americans occupied the site before the French built the first Fort Toulouse in 1717. The fort was then rebuilt in 1747 as a result of erosion. Following the defeat of the Indians at the Battle of Horseshoe Bend in 1814, Fort Jackson was erected in honor of Andrew Jackson. The site is managed and maintained by eight permanent staff and receives over 155,000 annual visitors, the most of any Commission property. This is considered a priority 1 property.

### Gaineswood

The 4% acre property at Gaineswood consists of a historic mansion, circa 1843-1861, a servant house, shed, and gazebo. The outbuildings have been deemed structurally unsafe. The property is located in Marengo County. The commission has three full-time permanent employees located at the facility. Gaineswood welcomes just over 3,000 visitors annually. This is considered a priority 2 property.

### Magnolia Grove

Magnolia Grove is a 15 acre site in Hale County consisting of a house (circa 1840), a kitchen, an office, and a servant house. The site is staffed by two employees, and receives less than 900 annual visitors. This is considered a priority 2 property.

### Middle Bay Lighthouse

The Middle Bay Lighthouse, built in 1885, is located in Mobile Bay and is only accessible by boat. It is the only example of this type in the region. Because of the remoteness of the site, it is not staffed nor are visitors counted. This is considered a priority 3 property.

### Montgomery Greyhound Station

Located in downtown Montgomery, this is the site of an important Civil Rights event, in which Freedom Riders arriving at the bus station were brutally attacked by an angry mob. Only a portion of the original bus station remains. It is adjacent to the old Federal courthouse that was the site of the subsequent trial and other Civil Rights cases. Its proximity to the new federal courthouse restricts its use. The current owner (the U. S. General Services Administration) has now leased the property to the commission. The commission has proposed to use another existing building in the vicinity as a visitor center. This is considered a priority 1 property.

### Old Cahawba

Old Cahawba is a 433-acre site consisting of an abandoned town, and Alabama's first permanent capital (1819-1826), in Dallas County. The Fambro house and the Barker slave houses are the only early buildings that remain, but several archaeological sites are present. Historic structures and cemeteries, as well as modern facilities, adorn the property. This large site may soon more than double in size as a result of the acquisition of additional lands by the commission through eminent domain and other purchases. The site is staffed by seven permanent employees, and welcomes nearly 80,000 annual visitors. This is considered a priority 1 property.

### Pond Spring

Pond Spring, also known as the General Joe Wheeler home, is a 50-acre site in Lawrence County with multiple historic and modern buildings, as well as a rock-lined pond. The Main House dates back to the 1890's, though some buildings on the site are from much earlier. A staff of four manages and maintains the site, which received approximately 2,500 visitors annually before it was closed (see discussion below in *Findings and Recommendations* section). This is considered a priority 1 property.

### Tardy Cottage

The Tardy Cottage is an 1858 raised cottage in downtown Mobile that has been restored and converted to leased office space. This property was not ranked in the ERA report.

### Damage from Hurricane Ivan

Currently, the commission is working with the Federal Emergency Management Agency (FEMA) to restore those sites that were damaged by Hurricane Ivan.

The Fort Morgan site in Baldwin County suffered the worst damage due to Hurricane Ivan. The ferry landing and dock was destroyed. There was flooding in the fort and the 1903 latrine was destroyed. The Senior Staff building is missing a ridge cap and the ceiling has fallen. The bakery steps were washed away. The ductwork washed away under buildings on piers, one AC condenser flooded, the restrooms flooded and the septic system is backed up. Also, the fishing pier has structural and deck damage. The fences near the entrance were damaged. The staff has removed the water from the fort and they are in the process of removing mud from the building. The steps at the bakery have been recovered and repaired. The bathrooms are now repaired and sanitized. The fences have now been fixed.

Damaged caused by Hurricane Ivan to the Middle Bay Lighthouse included some shingles missing, some siding damage, some of the roof deck is exposed, bolts are pulled loose on the dock platform, and the drip flashing is missing. In addition, it was reported that there is a potential for some unseen structural problems. These repairs are awaiting evaluation from a roofing contractor and engineer.

Hurricane Ivan caused damage to the Old Cahawba site. The site had a porch collapse at the Fambro House and a tree fall on the Education Center. Also, there was damage to the tin roof on the St. Luke's Church and the chimney collapsed on the McHugh House. All debris is now cleaned up and the tree on the Education Center has been removed and the shingles replaced.

Hurricane Ivan caused some roof damage to the Magnolia Grove slave house and some shingles were missing on a storage building. Trees and limbs are also down due to the storm. These damages have since been repaired.

Damage done by Hurricane Ivan at Fort Toulouse included the log woodshed being crushed and no water due to the pump being damaged. This pump has since been replaced. The staff is now in the process of rebuilding the shed and cleaning up the debris.

FEMA assessed approximately \$60,000 of damage to the Pond Spring site.

The Capitol suffered minor damage from Hurricane Ivan. Besides limbs and debris, the exterior paint and plaster had some damage due to the storm. The debris has since been cleaned up, however, the exterior paint and plaster has yet to be repaired.

## **FINDINGS AND RECOMMENDATIONS**

### **Finding #1 - Personnel Actions, Related Expenditures, and Ethics Problems**

The commission allowed Executive Director Lee Warner to resign on August 20, 2004, effective January 7, 2005. It appears that his resignation was in lieu of termination of his employment by the commission. Mr. Warner was allowed to receive his full salary during the period between August 20, 2004 and January 7, 2005, although he was not allowed to work at the commission's office in Montgomery. On August 20, 2004, an agreement was signed by Lee Warner and Janice Hawkins as Chairperson of the commission. This agreement allowed Lee Warner to continue receiving his full salary while providing the commission with the following services: (1) consulting services regarding the acquisition of a ferry boat to be used at Fort Morgan; and (2) consulting and other services regarding the acquisition of property now belonging to the City of St. Jude in Montgomery in connection with the establishment of the trail commemorating the Selma to Montgomery civil rights march. These services were to be provided for the first eight weeks after August 20, 2004, at which time Mr. Warner was placed on annual leave for the remainder of the period until the effective date of the resignation.

Under Mr. Warner's direction, several other questionable personnel actions and related expenditures occurred.

In June 2002, Mr. Warner hired Persijs Kolberg, Ph.D. as site director for Fort Morgan. A letter dated April 8, 2002 from Lee Warner to Douglas Lunsford, Manager Special Projects - State Personnel Department, Mr. Warner requested that Dr. Kolberg be hired at a salary level above the minimum entry level salary for the position. He stated in the letter that Dr. Kolberg expressed a great interest in working for the commission and was willing to accept a pay cut from what he previously earned. The letter stated that the State's salary range for the position was substantially lower than the last position Dr. Kolberg held in California. Dr. Kolberg agreed to accept employment at the salary approved by the State Personnel Department.

In May 2002, the commission purchased a house built in 2000 located in Gulf Shores, Alabama. A refrigerator to be used in the house was also purchased by the commission. Dr. Kolberg and his wife reside in the house and do not pay rent. A state car is also assigned to him. In a letter dated August 15, 2003 from Lee Warner to Seth Hammett, Speaker of the House of Representatives, Mr. Warner stated that "Fort Morgan is, as you know, a large site which has highly significant challenges - both financially and programmatic. As we worked to find a Site Director with the experience and ability to

successfully deal with these, it became obvious to us that we could not be successful in finding this person within the rigid salary limitations of the state personnel system. Accordingly, we determined to provide housing to the director as part of our compensation package. We carefully researched the legality and appropriateness of this kind of action and secured the assent of State Personnel Department." The letter also contained an excerpt from the commission's policy manual which provides that Commission employees may be required to live on Commission-owned property in order to "1) provide someone on site to tend a property; 2) provide an off-hours presence on-site; 3) have a key employee live in the community that forms the base of support for a historic site; 4) provide a wage enhancement in areas with a high cost of living."

We discussed the purchase of the house in great length with the commission's Administrative Services Supervisor, Clara Hudson, who informed us that Mr. Warner secured the approval of State Personnel and the Attorney General's Office to purchase the house. We reviewed the minutes for the April 3, 2002 Executive Committee Meeting and noted in Mr. Warner's Director's Report that a house was being purchased in Gulf Shores to be used by the new site director at Fort Morgan and the purchase of the house had been approved by the Attorney General's Office and the State Personnel Department. We contacted the State Personnel Department and the Office of the Attorney General to substantiate Mr. Warner's and other employees' statements to us and to the commission and we determined that no such approvals were obtained. Also, there was a mobile home on-site at Fort Morgan in which the former site manager lived. It does not appear that the purchase of newly-built living accommodations that are not located on a historical site is authorized by the statutes governing the commission.

The commission hired Myers Brown as a curator for the Pond Spring site. Mr. Brown was paid \$1,250 for moving expenses upon his hiring, which is not an allowable expenditure from state funds. The moving expenses were paid from the account of the Joe Wheeler Foundation, which is a separate non-profit organization. The Pond Spring site manager, Melissa Beasley, wrote a letter instructing the accountant of the Joe Wheeler Foundation account to pay Mr. Brown for his moving expenses.

Lisa Lichtfuss was hired by Lee Warner in July 2003 to serve as the fund-raiser for the commission and the Alabama Historical Commission Foundation, Inc. Mrs. Lichtfuss' salary was \$78,999.96 annually. She also received a monthly stipend of \$1,500 from the Alabama Historical Commission Foundation, Inc. to cover her travel expenses, and a housing allowance for her to live in Montgomery because her home is in Tupelo, Mississippi. Mrs. Lichtfuss traveled from Mississippi on Monday mornings to report to work by mid-day and usually left by mid-day on Thursdays to return to Tupelo, Mississippi. Mrs. Lichtfuss included her travel time as work time on her timesheets. Mr. Warner also routinely allowed her to work from her home in Mississippi.

In October 2004, we reviewed the personnel files to determine the job duties of Mrs. Lichtfuss. However, there was nothing in the file to indicate her duties. We asked the commission's Administrative Services Supervisor about the duties of Mrs. Lichtfuss. She stated that Mrs. Lichtfuss reported directly to Mr. Warner and the foundation and she was not aware of Mrs. Lichtfuss' duties.

Mrs. Lichtfuss verbally admitted to us that she worked solely for the foundation, and was paid by the commission with the understanding that the foundation's sole purpose is to

support the commission. In September 2004, Mrs. Lichtfuss was asked by the foundation board to write a draft of her perception of her duties.

On October 20, 2004, Mrs. Lichtfuss resigned effective November 1, 2004. During Mrs. Lichtfuss' last month of employment it was noted that she was not present in the Montgomery office for approximately three weeks. We requested a copy of Mrs. Lichtfuss' itinerary from the commission to determine where she was working. We were informed that Mrs. Lichtfuss was permitted to work from home until the effective date of her resignation. Upon review of Mrs. Lichtfuss's Form 11, we noted that she was to be paid for 64 hours of unused annual leave. Mrs. Lichtfuss not only earned annual and sick leave, she also earned compensatory leave almost every pay period.

Mr. Warner authorized a Commission employee, Cheryl Sneddon to be absent from work for a period of seven weeks, while on a personal trip to China; however, the employee was not required to take annual leave but instead was allowed "administrative leave". The commission did not demonstrate that it received any benefit or furthered its statutory mission by allowing this employee to be paid and not on annual leave during this time. According to the State Personnel Department, any "administrative" or additional leave must be specifically authorized by the Governor. The commission did not obtain the Governor's approval for this employee to be on "administrative leave".

Mr. Warner hired Mark Driscoll as the Historic Sites Director. Subsequently, Mr. Driscoll's wife, Janet Driscoll, was contracted to perform graphic design work for the commission. Mrs. Driscoll performed graphic design work on the *Handbook for Owners of Alabama's Historic Houses* and was paid \$2,360. She also designed page grids and formatting for the Alabama Historic Inventory Manual for \$499.

The Goat Hill Museum gift shop was managed by a contract employee who earned approximately \$42,000 per year. This appears to be an excessive salary for a small gift shop manager when compared to similar types of retail operations at other state agencies. It is our understanding that the contract for this employee has been terminated.

### **Recommendations**

The commission should operate within the scope of its legal authority as a state agency when hiring and terminating employees. Additional benefits and compensation should not be provided to employees of the commission that are not specifically authorized by law.

The commission should adjust (reduce) the annual leave balance for Ms. Sneddon for the hours she was absent from work during her personal trip to China.

The commission should not hire or place employees in positions for which a conflict of interest may exist. The commission should ensure that transactions and contracts with others do not create or result from a conflict of interest on the part of its employees or Commission members.

## **Finding #2 - Historic Preservation Investment Fund Cash Balance Reconciliation**

The commission operates from two Special Revenue Funds in the State Treasury. In 1990, the State Historic Preservation Fund #365 was established by the *Code of Alabama 1975*, Section 41-9-255, as an "operating fund", into which all Commission moneys were deposited and from which all expenditures of the commission were paid. The Historic Preservation Investment Fund #785 was established in 1995 as authorized by the *Code of Alabama 1975*, Section 41-9-249(7c). The money deposited in Fund #785 is invested by the State Treasurer in short-term investments such as repurchase agreements and certificates of deposit, on behalf of and specifically authorized by the commission.

During the past ten years, the State Treasurer maintained interest-bearing bank accounts used to hold money in the Historic Preservation Investment Fund #785. The separate bank accounts were necessary because the interest from the money placed in the bank accounts accrues to the commission instead of the General Fund. The State Treasurer maintained the funds therein and invested or liquidated investments upon instructions from the commission. As funds were needed to meet the commission's expenditure obligations, Commission accountants sent requests to the State Comptroller's Office to transfer funds from Fund #785 to Fund #365. The commission also had the responsibility to inform the State Treasurer that transfers to Fund #365 were being made.

The commission has a responsibility to maintain adequate accounting records, to adequately record transactions, and to reconcile its bank account and State Treasury account balances with their accounting records. The commission has never balanced its accounting records for Fund #785 to the records maintained by the State Treasurer and the State Comptroller's records. As we reported in previous examinations, the commission's accounting records were out of balance with the State Comptroller and State Treasurer. We recommended that the commission's accountants reconcile the accounting records to those of the State Treasurer and State Comptroller. The commission's accounting staff attempted several times to reconcile the records and were unable to do so; therefore, at the request of the commission accountants and the State Treasurer, we performed a complete reconciliation of the commission's accounting records for the past ten years.

On many occasions during the ten-year period, the commission's accounting staff failed to notify the State Treasurer's office when money needed to be transferred from the bank accounts to the State's main accounts to meet the commission's expenditure obligations. The commission would record a transfer from Fund #785 to Fund #365 with the State Comptroller; however, the commission failed at times to notify the State Treasurer of the need to transfer the money from the bank accounts to the State's account to meet the expenditure obligations of the commission. As a result, investments purchased from the bank accounts were not liquidated and deposited, and monies were not moved from the bank accounts to coincide with the transfers that were recorded within the State Comptroller's records. Instead, other monies in the State Treasury were used to pay for Commission expenditures while the commission's money remained in the bank accounts or invested. This resulted in the bank account balances being in excess of the available cash balance recorded in Fund #785. During the 2001-2002 fiscal year, the commission liquidated all of its investments (repurchase agreements and Certificates of Deposit) and deposited the money in the bank accounts; however, other State Treasury money continued to be used for expenditures, while Commission funds remained in the interest-bearing bank accounts.

We performed a reconciliation of the bank accounts and Fund #785, beginning at the inception of Fund #785 in 1995. The results of our reconciliation are presented in the table below. The information in the table represents transactions recorded in the accounting records maintained by the State Comptroller. These transactions represent the actual receipts and disbursements that were processed.

Fiscal Year	Beginning Available Cash	Receipts	Disbursements	Time Deposits and Repurchase Agreements	Year-End Available Cash
1994-1995	\$ 0.00	\$1,633,825 50	\$ 0.00	\$(534,650.67)	\$1,099,174.83
1995-1996	1,099,174.83	(810,421 .16)	366,444.19	(486,622.68)	168,575.18
1996-1997	168,575.18	582,288 37	(250,000.00)	257,836.87	758,700.42
1997-1998	758,700.42	878,746 07	(817,534.49)	(45,803.23)	774,108.77
1998-1999	774,108.77	1,259,953 64	(1,494,239.12)	0.00	539,823.29
1999-2000	539,823.29	775,072 60	(890,567.20)	0.00	424,328.69
2000-2001	424,328.69	2,232,659 02	(2,575,000.00)	0.00	81,987.71
2001-2002	81,987.71	3,037,391 87	(3,330,225.00)	274,589.04	63,743.62
2002-2003	63,743.62 \$	2,321,270 \$ 60	(2,490,000.00)	534,650.67 \$	429,664.89 \$
2003-2004	429,664.89	864,838 58	\$(1,079,664.00)	0.00	214,839.47

At September 30, 2004, the reconciled cash balance for Fund #785 was \$214,839.47 and the bank accounts held \$1,974,343.06, resulting in a difference of \$1,759,503.59. This amount, \$1,759,503.59, represents the amount that should have been transferred from the bank accounts to Fund #785 for transfer to Fund #365; therefore, this amount is due to the State Treasury from the bank accounts.

### **Recommendation**

The Alabama Historical Commission should implement procedures to ensure that the correct amount of cash and investments are recorded in the State of Alabama Central Accounting System and included in the Alabama Historical Commission's cash balances in the State Treasury. These procedures should include notifying the State Treasurer of all transfers needed by the Alabama Historical Commission and reconciling the accounting records and bank accounts monthly. The Alabama Historical Commission and the State Treasurer should immediately transfer \$1,759,503.59 from the bank account to the State Treasury to repay the State Treasury through September 30, 2004.

### **Finding #3 - Pond Spring (Wheeler Home) Historic Site and Conditions at Other Sites**

The Pond Spring site is closed because of its condition of disrepair and deterioration. The artifacts at the Pond Spring site are in jeopardy of being lost. The Wheeler house, which is the main house on the site, was closed on January 1, 2000 because it was unsafe for tours. The ceilings have holes, the walls are cracking with areas where the plaster is falling off, the stairs outside are falling in, there is a hole between the side walkway and the stairs leading to the entrances on the side and back of the house, and the artifacts which are covered in plastic are stacked in piles inside the house. Currently, artifacts remain exposed to the elements and stand the risk of being lost if not moved immediately to a climate-

controlled environment until the house is adequately restored. Visitors were allowed to tour the entire site with the exception of the main house until November 29, 2004, when the entire site was closed due to its state of disrepair and for liability reasons. There is a barn which is falling down and is beyond repair. There are trenches, which have been there for an extended period of time, with piles of dirt next to them and roped barricades around them throughout the site. Some of the structures on the property in eminent danger of collapse have been restored. The commission is currently in the process of securing appropriate storage for the artifacts until the main house can be restored.

The commission contracted with a consultant, Jack Pyburn, on March 12, 2001 to prepare a Master Plan for restoration of the Pond Spring site. The original contract amount for the consultant was \$315,673. On March 27, 2002, the commission approved a \$159,440 amendment resulting in a total contract amount of \$475,113. As of September 30, 2004, the commission had paid \$410,484.09 with a remaining balance on the contract of \$64,628.91. The master plan prepared by the consultant was dated May 2002. The estimated cost to restore the historic buildings on the site was approximately \$2 million. The estimated cost was expected to increase if the proposed restoration was prolonged and further deterioration occurred.

William Seale, a historian from Virginia, submitted an \$18,000 proposal to the consultant Jack Pyburn, for the Pond Spring master plan project. Mr. Seale proposed to visit the site, study the collection and evaluate it generally in terms of preservation/conservation, study the buildings and evaluate them generally in terms of preservation/conservation and make observation on how the studies could best be presented to serve the current interpretive plan. The end product was to be a written plan. Mr. Seale made two visits to Pond Spring and wrote two letters for which he was paid \$7,000 by Jack Pyburn. Mr. Seale did not submit a written report and did not perform any more work on the project and did not indicate that he desired to participate any further. Jack Pyburn continued the work and completed the Master Plan in May 2002 which was accepted by the commission. Over a year later, Mr. Seale contacted Executive Director Lee Warner and was upset that he did not finish his project. Lee Warner and Mark Driscoll, Historic Sites Director, requested of Jack Pyburn that Mr. Seale be allowed to add whatever he desired to the plan. Mr. Seale was sent a full set of the master plan documents for his review. Mr. Seale sent back a set of editorial comments which were subsequently incorporated into the plan. Mr. Seale did not produce a report as indicated in his proposal. Mr. Seale then submitted an invoice for \$11,000 to Jack Pyburn on March 29, 2004 for his additional work on the master plan. Jack Pyburn would not pay this invoice; however, it was paid by the Alabama Historical Commission Foundation, Inc. on June 9, 2004 "in order to maintain a good working relationship with Mr. Seale".

Since the master plan was received, the commission has spent approximately \$431,373.63 on restoration of the site; no expenditures for construction or restoration were paid during the 2003-2004 fiscal year. The contractor used in the construction/restoration was Leatherwood, Inc. An electrical subcontractor used by Leatherwood, Inc. did not fulfill their contractual obligation and abandoned the job before finishing the electrical work. At the completion of this examination, the electrical work remained unfinished with no expected date of completion.

The Fort Morgan site has buildings in need of repair and regular maintenance. This site suffered serious damages due to Hurricane Ivan which have not been repaired, including the destroyed ferry dock and landing.

The Teague house needs painting, some of the bricks surrounding the house have fallen down, the fence is broken and the steps are slippery and in need of painting. The upstairs balcony is also in need of repair. We attended a meeting of the Executive Committee of the commission in the historic carriage house located at the rear of the Teague House property in Montgomery, where we noticed unrepaired water damage and several large buckets placed on the floor in the carriage house to catch water from the leaking roof.

### **Recommendation**

The Alabama Historical Commission should implement adequate procedures in order to ensure the preservation of historic sites and artifacts under its management. Artifacts in danger of being lost should be placed in a protected, safe area as soon as possible.

### **Finding #4 - Alabama Historical Commission Foundation**

On November 1, 2001, three Commission members established the Alabama Historical Commission Foundation, Inc. as a separate non-profit organization to provide financial and program support to the commission. Instead, the foundation has received substantial financial and program support from the commission and has not provided any substantial benefits or support to the commission. The foundation received donated and other public funds that normally would have been received by the commission and deposited into the State Treasury.

The foundation has received financial benefits because of its relationship with the commission. All of the commission's executive committee members are Foundation board members. Three of the commission's employees perform Foundation business on state time, and the foundation's computer is housed in the main office of the commission. The incorporation fee was paid by Commission employee Lisa Jones. The commission subsequently reimbursed Ms. Jones with state funds for the amount of the incorporation fee. The commission has also directed what appears to be public funds from outside sources to the foundation.

The foundation received \$135,000 from the Montgomery Riverfront Development Foundation (MRDF). The commission and the MRDF entered into an agreement dated December 18, 2002, which relates to modification of the commission's easement on the Montgomery Riverfront Center. The agreement stipulated that the MRDF would pay or cause to be paid to the commission or its designee \$400,000 and a gift of four contiguous season tickets to the Alabama Preservation Alliance to all baseball events so long as the stadium exists. A payment of \$135,000 was received by the foundation as the commission's designee. No other payments had been received; however, it appears that future payments will be given to the foundation.

The foundation received \$14,000 from the Joe Wheeler Foundation, a non-profit organization. The Joe Wheeler Foundation received \$14,000 from cellular telephone tower mitigation settlement on the Pond Spring site. Mr. Warner stated that he "parked" the

State funds in the Wheeler Foundation because he did not want the State to have access to the funds and he had no where else to put the funds. When the Alabama Historical Commission Foundation, Inc. was established, Lee Warner instructed the Wheeler Foundation's accountant to issue the \$14,000 check to the new Foundation. Lee Warner acknowledged that he "bent the law" by parking these funds in the Joe Wheeler Foundation checking account. He stated that "we did not want to put that money in the commission's accounts because we would lose control of it".

The foundation also received funds from donors because of the fund-raising activities of Lee Warner and other Commission employees. The fund raising activities were incurred at the expense of the commission. If the foundation had not been formed, it is likely the funds would have been received by the commission and would have been deposited in the commission's accounts. Lisa Lichtfuss was instructed to direct any funds raised to the foundation; however, she did not raise any funds the entire time that she was employed by the commission.

Ms. Lichtfuss received \$21,494.32 from the foundation for travel and housing. Although she resided in Mississippi and she accepted employment in Alabama, the commission did not require her to move and arranged for the foundation to pay her a housing and travel allowance each month.

Lee Warner received \$8,404.83 for meals and entertainment, travel reimbursements, and copying expenses from the foundation. Of this amount, Mr. Warner purchased \$273.48 of alcoholic beverages. He spent \$839.71 for entertainment of a potential donor who later donated \$536. He spent \$1,746.12 to pay the travel expenses, meals, and entertainment expenses for applicants for the fund-raiser position.

The foundation paid Lisa Jones \$3,000 for moving expenses. Ms. Jones is the commission employee who initially paid the foundation's incorporation fee and who is currently managing the Fort Morgan ferryboat acquisition project.

The foundation also had purchases totaling \$8,690.60 as follows: \$257.40 for champagne, champagne glasses, strawberries, truffles, cheese and crackers for a reception; \$44.64 for flowers; \$1,000 for a historical marker; \$5,000 for a fund-raiser on a national level; \$2,388.56 for credit card purchases including a laptop computer for Lee Warner, food, and other travel expenses.

Most of the above expenses paid by the foundation are not allowable expenses for public funds and would have been illegal if paid from Commission funds.

It was noted that the Alabama Historical Commission Foundation, Inc. should have a balance of \$52,789.75 reserved for the Pond Spring historic site. Based upon the records reviewed, the foundation received donations for Pond Spring totaling \$70,291.69 and had expenditures related to Pond Spring in the amount of \$17,501.94 of which \$11,000.00 was paid to William Seale as discussed above.

### **Recommendation**

Donations and other income made payable to the commission should not be given to the foundation and deposited in the foundation bank account. The Alabama Historical

Commission should ensure that all employees that are hired as state employees work for the commission and that no employee does work for another entity while on State time.

**Finding #5 — Fort Morgan Ferry Project**

The commission lobbied the U. S. Congress for approval of \$2.5 million in federal funds for the Fort Morgan ferryboat project. However, the congressional appropriation and spending authority for these funds has not occurred, and authorization may initially occur for only \$2.2 million. There is a matching funds requirement of 25%, which means that the commission must provide an additional \$625,000 in non-federal funds for the project if it is fully funded. All of the funds will be required to be used for capital outlay and may not be used for maintenance or operating expenses. The ferry landing at Fort Morgan was destroyed by Hurricane Ivan. The ferry landing has to be repaired or rebuilt before a ferry can be operated from the site. It is estimated that it will take \$665,500 to repair the ferry landing back to its previous condition, or \$1,469,000 to rebuild the entire ferry landing in accordance with up-to-date specifications. Previously, the commission annually received \$30,000 (\$2,500 per month) in rental income from a private ferry operator and 10% of every dollar above \$700,000 from the ferry company's revenues on a calendar year basis under the terms of a concession contract. Before Hurricane Ivan, the commission was guaranteed at least \$30,000 per year from the ferry operations concession contract. While the concession contract appears to be legal, the acquisition and operation of a ferryboat by the commission does not appear to be a historic preservation activity consistent with the statutory mission of the commission.

**Recommendation**

The commission should seek legislation that specifically authorizes activities such as the purchase, ownership, and operation of a ferryboat, which is unrelated to its current mission of preserving historic properties.

**Finding #6 - Improper Use of Refunds Against Disbursements**

The commission improperly coded money received for resale merchandise as a refund against disbursements. This resulted in a circumvention of the Budget Management Act and understatements in the sales of merchandise in the commission's financial statements.

To ensure compliance with the Budget Management Act in the *Code of Alabama 1975*, Sections 41-19-1 through 41-19-12, state agencies prepare operations plans. The operations plans identify personnel costs, employee benefits, travel, supplies, equipment purchases, and other expenditures by major object code and represent the annual operating budget for the fiscal year. The information on the operations plans is used to control spending against the approved appropriation (program) amount by major object code. As transactions are processed throughout the year, the total of expenditures and purchase orders may not exceed the amount recorded for each major expenditure object. For example, if an agency budgeted \$600 for object code 0500 (Repairs and Maintenance) and has expended \$500 against object code 0500, a purchase order or expenditure exceeding \$100 against object code 0500 will not be processed because of insufficient budget authority. Revisions to the operations plan can be made and are necessary for various

reasons, including additional allotments needed and adjustments between line items of major object codes to better reflect expenditures. Procedures to revise the operations plans are outlined in the Fiscal Policy and Procedures Manual issued by the Department of Finance.

According to Commission accounting personnel, in prior years, when historical sites exceeded their budget authority for resale merchandise, a cash receipt (refunds against disbursements) was prepared. Once processed, the cash receipt will reduce expenditures in Central Accounting System, allowing the commission to purchase additional merchandise without following the appropriate procedures for revisions to the operations plans. This also appears to have contributed to an understatement of sales in the 2001-2002 fiscal year of \$21,000.

The commission implemented the recommendation below subsequent to the examination period.

#### **Recommendation**

Revisions to the Alabama Historical Commission operations plans should be made according to procedures outlined in the Fiscal Policy and Procedures Manual, and proceeds from sales should be classified as such in the accounting records and financial statements.

#### **Finding #7 — Improper Deposits of Routine Operating Receipts**

The State of Alabama uses funds to separately account for the various activities of each agency. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain government functions or activities. The *Code of Alabama 1975*, Section 41-9-255, established the "Alabama Historic Preservation Fund" (Fund #365) and requires that all moneys received by the commission from admissions, inspection fees, leases, rentals, loans, governmental appropriations be deposited into this Fund. As the main operating fund of the commission, Fund #365 has budgetary controls placed upon it, while the Alabama Historical Preservation Investment Fund #785 does not.

During the examination period, money collected routinely by the commission (admission fees, etc.) to be used for operations was deposited into the Historic Preservation Investment Fund #785 instead of the commission's normal operating Fund #365. This was also reported in previous examinations. As a result, numerous transfers were required to move money from Fund #785 to Fund #365 to pay operating expenses. This does not appear to be in compliance with the laws that established the funds.

#### **Recommendation**

The Alabama Historical Commission should deposit all revenues that will be used for operations into Fund #365. Only donations, gifts, bequests, or other similar revenues or

grants from private sources that are specifically intended for investments should be deposited into Fund #785.

#### **Finding #8 - Minutes of Commission Meetings**

Attorney General Opinion 99-153 advises that minutes should be taken at meetings even when no business is conducted. Attorney General Opinion 90-045 also advises that complete and accurate minutes must be kept of meetings. The minutes reviewed did not properly reflect the proper actions of the commission. The minutes were not complete and were vague. In some instances, the business conducted during the commission meetings was not determinable.

The commission implemented the recommendation below subsequent to the examination period.

#### **Recommendation**

The Alabama Historical Commission should ensure that complete and accurate minutes are kept of all Commission meetings.

#### **Finding #9 — Incorrect Leave Records and Payments**

It is the Alabama Historical Commission's responsibility to ensure that the service date and leave progression start date for each employee is correctly recorded in the State's payroll and personnel accounting system, the Government Human Resource System (GHRIS). Also, the Historical Commission should make certain the rate of annual leave being earned by the employee is correct. Out of a selection of 25 employees, there were two instances where the employee's leave progression start date was in error due to not adjusting the employees' leave progression start date for part-time work. In both instances this error caused the employees to accrue the incorrect amount of leave.

It is the Alabama Historical Commission's responsibility to ensure that the correct amount of leave is paid to employees who are terminated or retired during the examination period. There was one instance where an employee retired and did not receive payment for <sup>X</sup>A of her sick leave balance upon retirement.

There also was one instance where the payroll register shows that the employee was correctly paid for hours worked, holiday, and leave all in one lump sum. However, the employee's separation pay was not correctly allocated between regular hours worked and fringe benefits. This is considered an error in the accounting records.

These errors were communicated to appropriate personnel and were corrected.

**Recommendation**

The Alabama Historical Commission should ensure that the leave progression start date for employees is correctly recorded in GHRIS and that the rate of annual leave being earned by employees is accurate.

The Alabama Historical Commission should ensure that the correct amount of leave is paid to employees who are terminated or retired during the examination period and that the separation pay is properly recorded and allocated between regular hours worked and fringe benefits.

Sworn to and subscribed before me this  
the 17<sup>th</sup> day of March, 2005.

Hail Taylor  
Notary Public

Sworn to and subscribed before me this  
the 17<sup>th</sup> day of March, 2005.

Hail Taylor  
Notary Public

Respectfully submitted,

Sharon T. Elston

Sharon T. Elston  
Examiner of Public Accounts

Heather M. Oates

Heather M. Oates  
Examiner of Public Accounts

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## Statutory Authority

### **ARTICLE 10. HISTORICAL COMMISSIONS.**

#### **REFERENCES**

##### **CROSS REFERENCES**

As to historic preservation commissions and architectural review boards, see § 11-68-1 et seq.

As to Department of Archives and History, see § 41-6-1 et seq.

As to USS Alabama Battleship Commission, see § 41-9-340 et seq.

As to State Capitol Preservation Commission, see § 41-9-510 et seq.

### ***DIVISION 1. ALABAMA HISTORICAL COMMISSION.***

#### **§ 41-9-240. Legislative findings; purpose of division; creation of commission.**

##### [References](#)

The historical heritage of the State of Alabama is among its most valued and important assets, and the preservation of historic sites, buildings and objects within the state is of great concern to Alabama and its people. It is of special value to the youth of Alabama as a constant reminder of the circumstances under which our state was born and nurtured and under which our great nation has developed. To further foster the understanding and preservation of our heritage, there is hereby created and established an agency of the State of Alabama to be known as the Alabama Historical Commission. (Acts 1966, Ex. Sess., No. 168, p. 190, § 1.)

#### **REFERENCES**

##### **CROSS REFERENCES**

As to state flag display, see Chapter 2A of Title 1.

##### **LIBRARY REFERENCES**

##### **American Digest System:**

States 45.

##### **Corpus Juris Secundum:**

C.J.S. States §§ 79-80, 82, 136.

#### **§ 41-9-241. Commission a public body corporate. [References](#)**

The commission, as an agency of the State of Alabama, constitutes a public body corporate and shall have, in addition to those set forth specifically in this division, all


powers necessary or convenient to effect the purposes for which it has been established under and by the terms of this division, together with all powers incidental thereto or necessary to the discharge of its powers and duties.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 8.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States  45, 67.

**Corpus Juris Secundum:**

C.J.S. States §§ 79-80, 82, 120-121, 136-138, 140.

**§ 41-9-242. Purpose of commission.** [References](#) [Annotations](#)

The purpose of the Alabama Historical Commission, hereinafter referred to as the commission, shall be to acquire in its own name or in the name of the State of Alabama by purchase, devise, lease, assignment, license, condemnation, gift, bequest, transfer or otherwise buildings, objects and sites deemed worthy of being preserved, improved, protected and maintained for or on account of their particular historic, archaeological or architectural significance, including adjacent properties deemed necessary for the proper setting, use and administration of same, and said buildings, objects and sites shall include, but shall not be limited to, the following:

- (1) Buildings in which events of great significance to Alabama's or the nation's history have taken place and the sites surrounding them;
- (2) Birthplaces or residences of outstanding personages and the sites surrounding them;
- (3) The sites of historic or significant events in Alabama or United States history, including military engagements, Indian treaties and massacres;
- (4) Buildings of significant or outstanding architectural value;
- (5) Buildings, sites, objects or monuments of special significance to our cultural, military, social, economic, religious or commercial heritage, including post roads, traces, ruins, railroads, plantations, wharfs, missions, places of treaties, cemeteries, fortifications and places of worship; and
- (6) Archaeological sites for excavational, salvage, protective and interpretative purposes.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 2; Acts 1971, No. 500, p. 1213, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States  45, 67, 72.

**Corpus Juris Secundum:**

C.J.S. States §§ 79-80, 82, 120-121, 123, 136-138, 140.

## ANNOTATIONS

### CASENOTES

Generally 1 ..... enter p

#### 1. Generally

If, where fraud is not evident, the court sets itself up as a reviewing authority of purchases by the Alabama historical commission, litigation could result seeking the court's supervision and revision of activity that rightfully is the responsibility and prerogative of the governmental agencies and bodies concerned. This the courts are without constitutional authority to do and will not undertake to do. *State ex rel. Baxley v. Givhan*, 292 Ala. 533, 297 So.2d 357 (Ala.1974).

#### **§ 41-9-243. Composition of commission; qualifications, appointment, terms of office and removal of members; vacancies.** [Historical Notes](#) [References](#)

The commission shall consist of 20 members, one of whom shall be the Governor, one of whom shall be the Lieutenant Governor, one of whom shall be the Speaker of the House of Representatives, one of whom shall be the Director of the Department of Archives and History, one of whom shall be the Director of the State Bureau of Tourism and Travel, one of whom shall be the commissioner of Conservation and Natural Resources, one of whom shall be the Director of the Technical Staff of the Alabama Building Commission and 13 other persons to be appointed by the Governor, one of whom shall be selected from a list of three nominees submitted by the Alabama Council of the American Institute of Architects, one from a list of three nominees submitted by the Alabama Historical Association, one from a list of three nominees submitted by the Alabama State Chamber of Commerce, one from a list of three nominees submitted by the Alabama Farmers Federation, one from a list of three nominees submitted by the President of the University of Alabama, one from a list of three nominees submitted by the President of Auburn University, one from a list of three nominees submitted by the President of the University of South Alabama, one from a list of three nominees submitted by the President of Troy State University, one from a list of three nominees submitted by the President of the University of Montevallo, one from a list of three qualified archaeologists nominated by the Alabama Archaeological Society and three from the state at-large.

Said nominees and appointees shall be persons who have demonstrated interest in and concern about the preservation of this state's rich history and traditions and who are conversant with the history of the state and who are qualified to direct and supervise the work of the commission.

The members appointed by the Governor shall serve for terms of six years each; except, that the terms of the members of the first commission shall be three years for one half of the members appointed by the Governor and six years for the remaining members. After the expiration of the term of the initial members, all members appointed by the Governor shall be appointed for terms of six years each.

Any member of the commission may be removed by the Governor for cause, and

vacancies in the commission shall be filled by the Governor by the appointment of a competent and qualified person for the unexpired term, from a list of three nominees submitted to him by the organization which originally nominated the member being replaced.

The Chairman of the Restructured Historic Chattahoochee Commission shall serve as an ex officio policy making member of the commission.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 13; Acts 1969, No. 768, p. 1366, § 1; Acts 1971, No. 500, p. 1213, § 9; Acts 1973, No. 1077, p. 1831; Acts 1992, No. 92-108, p. 178, § 7.)

## HISTORICAL NOTES

### HISTORY

#### Code Commissioner's Notes


The last paragraph of this section was added by the Code Commissioner in order to conform the provisions of this section with the provisions of former § 41-9-304, as amended.

Acts 1992, No. 92-108, § 8 provides: "All actions taken by Alabama Farmers Federation or its officers in conjunction with or pursuant to the authorization to Alabama Farm Bureau Federation contained in Sections 2-3-24, 2-19-130, 2-26-71, 2-27-6, 2-27-30, 9-8A-3 and 41-9-243, Code of Alabama 1975, since the time of the change of name of said organization from Alabama Farm Bureau to Alabama Farmers Federation, are hereby ratified and confirmed."

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

States  46, 47, 48, 51, 52.

#### Corpus Juris Secundum:

C.J.S. States §§ 61, 80, 83-84, 87, 91-94, 96, 98-102.

### **§ 41-9-244. Members to serve without pay; expenses.** [References](#)

No member of the commission shall receive any pay or emolument other than his expenses incurred in the discharge of his duties as a member of the commission which expenses shall be paid in the amounts provided for in Article 2 of Chapter 7 of Title 36 of this code. All such expenses are to be paid from the funds of the commission.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 14.)

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

States  60(1).

**Corpus Juris Secundum:**  
C.J.S. States §§ 104-108.

**§ 41-9-245. Meetings generally; quorum; organization and procedure; officers.**

[References](#)

The commission shall hold an annual meeting at the Capitol building in Montgomery, and eight members of the commission shall constitute a quorum for the transaction of business. Additional meetings will be held at such times and places within the State of Alabama as may be considered necessary, desirable or convenient upon call of the chairman or, in the case of his absence or incapacity, of the vice-chairman. However, by four-fifths vote of the commission, such meetings may be held outside the State of Alabama. The commission shall determine and establish its own organization and procedures in accordance with the provisions of this division and the general law. The commission shall elect a chairman, a vice-chairman, a secretary and a treasurer, and such officers shall hold office for a period of one year and until successors are elected. (Acts 1966, Ex. Sess., No. 168, p. 190, § 15; Acts 1969, No. 768, p. 1366, § 2.)

**REFERENCES**

**LIBRARY REFERENCES**

**American Digest System:**  
States  67, 72.

**Corpus Juris Secundum:**  
C.J.S. States §§ 120-121, 123, 136-138, 140.

**§ 41-9-246. Board of advisors.** [Historical Notes](#) [References](#)

(a) There is hereby established a Board of Advisors to the Alabama Historical Commission. Said board of advisors shall consist of no less than 15 persons. Each of the below listed societies, organizations, individuals, commissions and institutions shall have the authority to name one member of said board and shall submit the name of said person to the chairman of the commission prior to the annual meeting of the commission:

- (1) The Alabama Division, United Daughters of the Confederacy;
- (2) The Alabama Society of the Daughters of the American Revolution;
- (3) The Alabama Society of the Daughters of the American Colonists;
- (4) The Mobile Historic Development Commission;
- (5) The National Society of the Colonial Dames of America in the State of Alabama;
- (6) The Huntsville Historic Preservation Commission;
- (7) The Alabama Department of the Sons of Confederate Veterans;
- (8) The Gorgas Memorial Board;
- (9) The Hobson Memorial Board;
- (10) The Cahaba Advisory Committee;
- (11) The LaGrange Historical Commission;

- (12) The Fort Morgan Historical Commission;
- (13) The USS Alabama Battleship Commission;
- (14) The Tennessee Valley Historical Society;
- (15) The Montgomery Antiquarian Society;
- (16) The Helen Keller Property Board;
- (17) The Birmingham Historical Society;
- (18) The Board of Trustees of the Mobile Museum Board;
- (19) The Board of Trustees of the Montgomery Museum Board;
- (20) The head of the department of history and the head of the department of archaeology of each accredited, four year, degree granting university and college located within the State of Alabama;
- (21) The John H. Forney Historical Society;
- (22) The Tuscaloosa County Preservation Society;
- (23) The Blount County Historical Society;
- (24) The Chattahoochee Valley Historical Society;
- (25) The Dale County Historical Society;
- (26) The Etowah Historical Society;
- (27) The Hale County Historical Society;
- (28) The Huntsville Historical Society;
- (29) The North Alabama Historical Society;
- (30) The Old South Historical Society;
- (31) The Pike County Historical Society;
- (32) The Society of Pioneers of Montgomery;
- (33) The Eufaula Heritage Association;
- (34) The Marengo Historical Society;
- (35) The Historic Mobile Preservation Society;
- (36) The Alabama Society, Sons of the American Revolution;
- (37) The Alabama Society, Southern Dames of America;
- (38) The Huguenot Society in Alabama;
- (39) The Alabama Society of the Colonial Dames of the 17th Century;
- (40) The Coweta Memorial Association; and
- (41) Any other local or regional historical society duly recognized by the commission which may exist or which may be created subsequent to August 19, 1966.

(b) Said advisory board shall meet annually at a place to be designated by the commission and shall serve without compensation. The board shall advise the commission on matters relating to the historic and architectural assets of the State of Alabama and assist the commission in compiling and maintaining an inventory of such assets and in carrying out all of its various duties.

(c) There may further be added to the advisory board by the commission such other civic, charitable and patriotic organizations as it may from time to time deem to be to the best interest of the commission.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 16; Acts 1969, No. 768, p. 1366, § 3.)

## HISTORICAL NOTES

## HISTORY

### Code Commissioner's Notes

The Fort Morgan Historical Commission, referred to in subdivision (12) of subsection (a) of this section, was abolished and all properties, powers, funds, etc., thereof transferred to the Alabama Historical Commission by Acts 1976, No. 628, p. 865.

The LaGrange Historical Commission, referred to in subdivision (11) of subsection (a) of this section, has been redesignated the LaGrange Advisory Committee, by Acts 1979, No. 614, p. 1084, § 3.

The Richmond Pearson Hobson Memorial Board, referred to in subdivision (9) of subsection (a) of this section, was abolished and all properties, powers, funds, etc., thereof were transferred to the Alabama Historical Commission by Acts 1980, No. 80-208, p. 289, § 1. See § 41-9-222.


## REFERENCES

### CROSS REFERENCES

As to Fort Tombeckbee Historical Advisory Board, see § 41-9-262.

### LIBRARY REFERENCES

#### American Digest System:

States  45, 46, 67, 72.

#### Corpus Juris Secundum:

C.J.S. States §§ 61, 79-80, 82, 84, 102, 120-121, 123, 136-138, 140.

### § 41-9-247. Executive director. [References](#) [Annotations](#)

The commission may employ an executive director, who shall serve at the pleasure of the commission and who shall be responsible directly to the commission for the general supervision and execution of the work of the commission. The commission shall fix his compensation, with the approval of the Governor and the State Personnel Board, the same to be paid from the funds of the commission, and shall further designate his duties and authority.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 6.)

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

States  46, 60(1).

#### Corpus Juris Secundum:

C.J.S. States §§ 61, 80, 84, 102, 104-108.

## ANNOTATIONS

### CASENOTES

Generally 1 ..... enter p

## 1. Generally

It is apparent from this statute that the function of the commission and the executive director is to achieve the objects and purposes for which the commission was created. *Floyd v. Alabama Historical Commission*, 388 So.2d 182 (Ala.1980).

### **§ 41-9-248. Employees.** [References](#)

The commission may employ either on a part-time or full-time basis such advisors, archaeologists, architects, engineers, attorneys, real estate appraisers, laborers, artisans, historians, caretakers, guides, peace officers, technicians, superintendents, stenographers and administrative employees and supervisory and professional personnel as may be necessary or advisable for carrying out in the most efficient and beneficial manner the purposes and provisions of this division, and all permanent full-time employees other than the executive director, the state officer of archaeology and projects supervisor shall be subject to the state Merit System.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 5; Acts 1971, No. 500, p. 1213, § 4; Acts 1975, No. 1173, § 1.)


## REFERENCES

### CROSS REFERENCES

As to Merit System, see § 36-26-1 et seq.

### LIBRARY REFERENCES

#### **American Digest System:**

States  53, 60(1).

#### **Corpus Juris Secundum:**

C.J.S. States §§ 81-83, 86, 93-98, 101, 104-108, 136.

### **§ 41-9-249. Powers and duties of commission generally.** [Historical Notes](#) [References](#)

The commission shall have the following duties and powers:

(1) To promote and increase knowledge and understanding of the history of this state from the earliest time to the present, including the archaeological, Indian, Spanish, British, French, Colonial, Confederate and American eras, by adopting and executing general plans, methods and policies for permanently preserving and marking objects, sites, structures and ruins as defined in Section 41-9-242;

(2) To promote and assist in the publicizing of the historic resources of the state by preparing and furnishing information to public mass media and to governmental agencies charged with publicity and to coordinate any of its objectives, efforts or functions with any agency or agencies of the federal government, of the State of Alabama and of other states or local governments having objectives similar or related to those of the commission;

(3) To accept for renovation, maintenance, restoration, preservation or management and operation any building or site within the State of Alabama owned by the United States, the State of Alabama or any agency or subdivision thereof or by the

national trust for historic preservation or by natural or corporate persons, public or private, upon such terms and conditions as to the commission shall be deemed in the best interest of the State of Alabama in conformity with the purposes of this division;

(4) To acquire, by exercise of the power of eminent domain, historic structures of paramount or exceptional importance, such as those Alabama landmarks eligible for nomination to or recorded in the National Register of Historic Places; provided, that at least two-thirds of the members of the commission shall vote to acquire such structures by the exercise of this measure;

(5) To charge admissions at the various buildings and sites under the control of the commission throughout the state and to sell booklets, pamphlets and souvenirs at said locations and to retain and use the proceeds of said sales and admissions for the furtherance of the purposes of the commission as defined by this division;

(6) To adopt a seal for the commission and to use the same on its brochures, stationery and other official publications and upon its historic site markers;

(7)a. To acquire, receive and take title to, by purchase, gift, lease, devise or otherwise, and to own, to hold, keep and develop, and to sell, transfer, convey, lease, and assign to any person or otherwise dispose of property of every kind and character, whether real, personal or mixed, whether tangible or intangible, whether in trust or otherwise, together with any and every interest therein, in furtherance of the lawful objectives of the commission;

b. To negotiate for Dismals Wonder Gardens in Franklin County; to be held in trust for the Alabama Indian Commission. The administration of said property shall be by and with consultation with the Alabama Historical Commission and the Alabama Indian Commission for the preservation of the historical heritage of said property and shall utilize any proceeds therefrom, including interest on any investments, for the preservation of the property;

c. To administer such property or trusts, whenever any such property is received or held to be used for the benefit of the historical heritage of the State of Alabama, for preservation of historic sites, buildings and objects, or for other lawful objectives of the commission, as it deems in the best interest of historical preservation or in furtherance of the objective for which the property is held or the donation or gift is made; and to convert such property or any portion thereof into securities or other forms of property and use the proceeds therefrom, including any interest on investments, as it deems will best promote the objectives of the commission;

d. To accept as trustee, beneficiary, or both, any interest in such property, together with any proceeds from its investment, for the benefit of historical preservation or other purposes of the commission, upon such conditions as may be acceptable to the donor and the commission. No such undertaking entered into by the commission or its agent or agents shall bind the state to pay any state moneys to anyone; provided, however, that nothing herein shall prevent the commission from undertaking payments out of the proceeds from such trust funds as a condition of the acceptance of the donation. All trust funds administered pursuant to this act may be required by the commission to pay the expenses of administering the same. Such gifts shall be deductible from Alabama state income tax by the donor or donors;

- e. To convey title or any interest in real estate by deed or other instrument executed by a majority of the commissioners or by agent or agents authorized by a majority vote of the commission; and to convey property other than real estate by agent or agents authorized by a majority vote of commissioners present and voting.
- (8) To maintain an office in a location in the state to be selected by the commission for the use of the executive director, the employees and the commission and to acquire the necessary furniture and equipment therefor;
- (9) To prepare, create, purchase and distribute pamphlets and brochures describing the various historic buildings and sites under the jurisdiction of the State of Alabama or any of its agencies;
- (10) To make and publish a survey of the buildings, ruins and sites of historic, architectural or archaeological significance within the State of Alabama and to make available such survey to individuals, institutions and governmental bodies desiring copies of same;
- (11) To determine from such survey the buildings, ruins and sites listed therein which are considered worthy of permanent preservation, to certify same as being worthy and to publish said list;
- (12) To establish criteria for the certification, selection and acquisition of historic properties for state ownership and for state aid to local historic site projects;
- (13) To nominate selected landmarks with historic, architectural and archaeological significance to the National Register of Historic Places using priorities established by the commission;
- (14) To establish and maintain an Alabama state historic preservation depository into which may be deposited antiques, relics, artifacts, mementos, paintings and other objects contributed to or acquired by the state or the commission. The commission shall have the authority to restore these objects and to use them for the furnishing of its own historic buildings and other selected landmarks in Alabama;
- (15) To rent or lease any of its acquisitions to public or private agencies;
- (16) To publish an informational newsletter which shall periodically report on and promote local, regional and state historic preservation activities;
- (17) To produce and publish technical ("how to") manuals on historic preservation;
- (18) To publish and present citations and distinguished service awards to selected private and public organizations and individuals for outstanding achievements in preserving the heritage of Alabama;
- (19) To purchase, produce, sell and distribute historic souvenir items;
- (20) To improve, restore, preserve, renovate, maintain, exhibit, repair, rebuild, recreate and reconstruct its acquisitions, and the commission shall have jurisdiction over the same and the exhibits located thereon;
- (21) To purchase or otherwise acquire and to erect and maintain "historic markers" on such buildings, roads, trails, routes and sites as it shall designate and to cooperate with and assist local, regional and state historical groups in selecting and erecting such markers; and
- (22) To accept the gift of money and real and personal property from any and all public and private sources. Such gifts shall be deductible from Alabama state income

tax by the donor.  
(Acts 1966, Ex. Sess., No. 168, p. 190, §§ 3, 7, 10, 11; Acts 1971, No. 500, p. 1213, §§ 2, 5, 6, 7; Acts 1991, 1st Ex. Sess., No. 91-805, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1991, Ex. Sess., amendment**, effective September 20, 1991, added subdivision (7) and redesignated former subdivisions (7) through (21) as subdivisions (8) through (22).

## REFERENCES

### CROSS REFERENCES

As to eminent domain generally, see § 18-1A-1 et seq.

As to the commission transferring the LaGrange Historical Site to the LaGrange Living Historical Association, see § 41-9-272.

### ADMINISTRATIVE CODE

10 Ala. Admin. Code 460-X-12-.01, Historical Commission; Underwater Cultural Resources: Permits.

### LIBRARY REFERENCES

#### American Digest System:

States  67, 72.

#### Corpus Juris Secundum:

C.J.S. States §§ 120-121, 123, 136-138, 140.

## **§ 41-9-249.1. Contracts for recovery or salvage of archaeological treasure, etc.**

### References

(a) Notwithstanding any provision of law to the contrary, the Alabama Historical Commission may enter into contracts with any group or person for the recovery or salvage of archaeological treasure, sunken or abandoned ships and wrecks of the sea, or parts thereof or their contents, which are determined to be located on state owned lands, or on private land if the written consent of the owner thereof is first obtained. Such contracts shall be on forms approved by the commission and may provide for fair compensation to the salvager, and owner of the private land where applicable, in terms of a percentage of the reasonable cash value of the objects recovered or at the discretion of the commission, of a fair share of the objects recovered. The amount constituting a fair share shall be determined by the commission, taking into consideration the circumstances of each operation, and the reasonable cash value may be determined by contractual agreement for appraisal by qualified experts or by representatives of the contracting parties. Each contract shall provide for the termination of any right in the salvager thereunder upon the violation of any of the terms thereof. Each contract shall be

approved by both the state Finance Director and the Governor. The distribution of the state's share of the recovery or salvage shall be as follows:

(1) All archaeological treasure and artifacts shall be placed in the custody and control of the Alabama Historical Commission.

(2) All monetary proceeds from the sale of any recovered or salvaged archaeological treasure or artifacts including but not limited to gold, silver or other precious metal shall be deposited with the State Treasurer to the credit of the State General Fund.

(b) The provisions of this section are supplemental. It shall be construed in pari materia with other laws regulating salvage and excavation of antiquities; however, those laws or parts of laws which are in direct conflict or inconsistent herewith are hereby repealed.

(Acts 1984, 2nd Ex. Sess., No. 85-53, p. 75.)

## REFERENCES

### ADMINISTRATIVE CODE

10 Ala. Admin. Code 460-X-12-.01, Historical Commission; Underwater Cultural Resources: Permits.

**§ 41-9-250. Preservation, operation, etc., of certain historical properties and sites by commission.**[Historical Notes](#) [References](#)

(a) The following historic properties and sites shall be under the jurisdiction and control of the Alabama Historical Commission:

(1) Fort Mims, Stockton, Baldwin County;

(2) Fort Toulouse, Wetumpka, Elmore County;

(3) Gaineswood, Demopolis, Marengo County; and

(4) Confederate Memorial Cemetery, Mountain Creek, Chilton County.

(b) The Alabama Historical Commission shall have full authority to develop, renovate, restore, preserve, maintain, operate, exhibit and publicize such properties in accordance with the powers and responsibilities of the said commission.

(Acts 1971, No. 665, p. 1374.)

## HISTORICAL NOTES

### HISTORY

#### Code Commissioner's Notes

Acts 1980, No. 80-208, p. 289, § 1, transfers to the Alabama Historical Commission all property under the management and control of the Richmond Pearson Hobson Memorial Board, which was abolished, with full authority to develop, renovate, restore, preserve, maintain, operate, exhibit and publicize such property. See § 41-9-222.

## REFERENCES

## CROSS REFERENCES

As to the commission transferring the LaGrange Historical Site to the LaGrange Living Historical Association, see § 41-9-272.

## LIBRARY REFERENCES

### **American Digest System:**

States ☒ 67, 88.

### **Corpus Juris Secundum:**

C.J.S. States §§ 120-121, 136-138, 140, 147.

## **§ 41-9-251. Cahawba Historical Site -- Preservation, operation, etc. [Historical Notes](#) [References](#)**

The Cahawba Historical Site, a property on the National Register of Historic Places, Dallas County, Alabama, shall be under the jurisdiction and control of the Alabama Historical Commission, which shall have full authority to develop, renovate, preserve, maintain, operate, exhibit, and publicize the Cahawba Historical Site in accordance with the powers and responsibilities of the commission.

(Acts 1975, 3rd Ex. Sess., No. 155, § 1; Act 2003-401, p. 1167, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 2003 amendment**, effective September 1, 2003, substituted "Cahawba" for "Cahaba" in two places, and substituted "the commission" for "said commission".

## REFERENCES

## LIBRARY REFERENCES

### **American Digest System:**

States ☒ 67, 72, 88.

### **Corpus Juris Secundum:**

C.J.S. States §§ 120-121, 123, 136-138, 140, 147.

## **§ 41-9-252. Cahawba Historical Site -- Advisory committee. [Historical Notes](#) [References](#)**

(a)(1) There is established an advisory committee to be known as the Cahawba Advisory Committee, composed of 16 members, 15 of whom shall be appointed by the Governor. The Judge of Probate of Dallas County shall be the sixteenth member but shall be a member ex officio and shall not be entitled to a vote on the advisory committee. The members shall serve for terms of seven years each, and the judge of probate shall serve throughout his or her term of office. Members of the advisory committee shall be appointed so that each congressional district is represented by one

appointed member on the advisory committee; except, that the congressional district in which Cahawba is situated shall be represented by eight appointed members, five of whom shall be residents of Dallas County and three of whom shall be from some other county in the congressional district. The membership of the advisory committee shall reflect the racial, ethnic, gender, urban/rural, and economic diversity of the state.

(2) The chair shall establish and maintain a bank account on behalf of the advisory committee and draw warrants for any lawful expenditures.

(3) The advisory committee shall advise the Alabama Historical Commission regarding the restoration and the development of the Old Cahawba Capital Site.

(4) The advisory committee shall choose biennially one of its members as chair, one as vice chair, and one as secretary-treasurer.

(5) Advisory committee members shall receive a per diem compensation sum to be fixed by the advisory committee, but the sum shall not be less than one hundred fifty dollars (\$150), for attending official meetings of the advisory committee. The chair may approve the payment for an advisory committee member authorized to perform official duties at other times. Advisory committee members shall receive per diem allowance and travel expenses incurred in attending official meetings or in performing any actual service under the direction of the advisory committee and shall be paid in accordance with Article 2, commencing with Section 36-7-20, of Chapter 7 of Title 36, after approval by the chair.

(6) The secretary-treasurer shall receive such compensation as may be fixed by the advisory committee, which shall be in addition to his or her per diem compensation and payments made under Article 2, commencing with Section 36-7-20, of Chapter 7 of Title 36. The secretary-treasurer shall be paid a sum for clerical expenses fixed by the advisory committee.

(b) The chair of the advisory committee, with the approval of a majority of the committee members, may appoint an executive director. The executive director shall not be a member of the state classified service.

(c) The executive director shall be compensated by a salary payable from any funds available to the advisory committee. The exact amount of the executive director's salary shall be set by the advisory committee, but in no event shall the salary be less than 60 percent nor more than 75 percent of the amount set as the standard compensation for cabinet level officials of the state.

(d) The executive director may hire an assistant director and such staff, at the pleasure of the executive director, as deemed necessary, with the approval of the advisory committee, but without regard to the state Merit System. The advisory committee shall approve all staff members hired and their job descriptions, and shall set the rate of pay or compensation due the assistant director and other staff.

(e) The advisory committee may permit any employee of the advisory committee to be treated as a state employee for the purpose of participating in any insurance programs and other fringe benefits provided other nonclassified state employees.

(f) It is the duty of the advisory committee, acting through its executive director, assistant director, and staff to perform the following duties:

(1) To provide statewide public awareness, public information, and education services regarding the Old Cahawba Capital Site.

(2) To solicit, collect, and receive funds from the public and private sectors for the support, maintenance, and preservation of the Old Cahawba Capital Site.

(3) To promote and encourage public and private efforts to benefit the Old Cahawba Capital Site project.

(4) To appropriate and expend funds, make grants, contract, cooperate financially or otherwise with the Alabama Historical Commission, Dallas County, and any historical organization, nonprofit corporation, or governmental agency to acquire, establish, maintain, reconstruct, and preserve historical sites in and around Alabama's first permanent Capital at Cahawba, as may be deemed beneficial by the Alabama Historical Commission.

(5) To acquire title, possession, or control of properties and also objects of historic interest associated with or representative of the era of the Old Cahawba Capital Site, but only those located beyond the Old Cahawba Capital Site.

(6) To make grants to the Alabama Historical Commission, Dallas County, and any historical organization, nonprofit corporation, or governmental agency to acquire title, possession, or control of properties or for their preservation, maintenance, reconstruction in, or relocation to Alabama's first permanent Capital at Cahawba.

(7) To lease, gift, sell, or otherwise dispose of any surplus, duplicate, or unused properties.

(g) The executive director, assistant director, and staff shall perform those duties required by the advisory committee necessary to implement this section.

(Acts 1943, No. 486, p. 449; Acts 1959, No. 387, p. 1012; Acts 1961, No. 815, p. 1191; Acts 1975, 3rd Ex. Sess., No. 155, § 3; Acts 1981, 1st Ex. Sess., No. 81-944, § 1; Acts 1982, No. 82-368; Acts 1994, No. 94-703, p. 1357, § 1; Act 2003-401, p. 1167, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1994 amendment**, effective May 4, 1994, in subsection (a) substituted "judge of probate" for "probate judge" throughout, in the third sentence, substituted "members" for "trustees" and substituted "seven years" for "four years", in the fourth sentence, substituted "is represented" for "shall be represented", deleted the fifth sentence regarding choosing a secretary, deleted the sixth sentence regarding official offices and storage of records, in the seventh sentence, deleted "of the advisory committee" preceding "or in performing", in the eighth sentence, substituted "Expenses shall" for "such expenses to" and substituted "approval by the chairperson of the committee" for "the account for such expense has been approved by the judge of probate of Dallas county", deleted the ninth through eleventh sentences regarding the Cahaba Historical Commission, in the twelfth sentence, substituted "chairperson shall" for "judge of probate is authorized to", in the present thirteenth sentence, inserted "Old Cahaba Capitol" and deleted the former thirteenth sentence regarding future appropriations to the Cahaba Historical resources management program; added subsections (b) through (f); and made nonsubstantive changes throughout the section.

**The 2003 amendment**, effective September 1, 2003, in subsection (a) designated subdivisions (1)-(3), added subdivisions (4)-(6), in subdivision (1) substituted "Cahawba"

for "Cahaba" in two places, deleted the fifth sentence and rewrote the final sentence, in subdivision (2) substituted "chair" for "chairperson", and in subdivision (3) substituted "Cahawba Capital" for "Cahaba Capitol"; in subsection (b) substituted "chair" for "chairperson"; in subsection (c) deleted "out of the State Treasury" following "payable" and deleted "in the manner that the salary to other state officials are paid" preceding ". The"; rewrote subsection (e); in subsection (f) in subdivisions (1)-(3) substituted "Cahawba Capital" for "Cahaba Capitol" and added subdivisions (4)-(7); and in subsection (g) substituted "The" for "Additionally, the".


#### **Code Commissioner's Notes**

In 1995, the Code Commissioner substituted "members" for "member" in the second sentence of subsection (d) for grammatical purposes.

## **REFERENCES**

### **LIBRARY REFERENCES**

#### **American Digest System:**

States  45, 46, 60(1), 67, 72.

#### **Corpus Juris Secundum:**

C.J.S. States §§ 61, 79-80, 82, 84, 102, 104-108, 120-121, 123, 136-138, 140.

### **§ 41-9-253. Cahawba Historical Site -- Powers of commission; payment of expenses.**

#### [Historical Notes](#)   [References](#)

The Alabama Historical Commission may acquire title, possession or control of such properties and also of objects of historic interest at the Cahawba Historical Site as it may deem necessary or proper to be maintained, preserved, and protected on behalf of the State of Alabama and may acquire, by purchase, construction, lease, gift, condemnation or otherwise, lands and rights in land, including leaseholds and easements, and water rights in the rivers and lands adjacent to or in the immediate vicinity of Cahawba. The commission's power of eminent domain may be exercised under Title 18 and any amendments thereto, or pursuant to any other general statutory provision enacted for the exercise of the power of eminent domain. The commission may mark in suitable manner the places or locations of historic interest at such point and prepare and publish for distribution pamphlets or other printed matter with respect thereto. The expenses incurred for such purposes by the historical commission shall be paid out of any appropriation made to the commission, upon warrant drawn by the Comptroller, supported by an itemized account thereof approved by the board of trustees and by the Governor.

(Acts 1943, No. 486, p. 449; Acts 1959, No. 387, p. 1012; Acts 1961, No. 815, p. 1191; Acts 1969, No. 854, p. 1560; Acts 1975, 3rd Ex. Sess., No. 155, § 1; Act 2003-401, p. 1167, § 1.)

## **HISTORICAL NOTES**

### **HISTORY**

**Amendment notes:**

The 2003 amendment, effective September 1, 2003, deleted ", within its discretion," following "Commission" and substituted "Cahawba" for "Cahaba" in two places.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States  67, 72, 85.

**Corpus Juris Secundum:**

C.J.S. States §§ 120-121, 123, 136-138, 140, 145.

**§ 41-9-254. Acquisition, operation, etc., of libraries or museums by commission; commission not to engage in publishing or printing of historical quarterlies.**

[References](#)


The commission shall not accept, acquire, operate or maintain libraries or museums, except when the same are an integral part of one of the properties owned or managed by the commission, nor shall the commission engage in the publishing or printing of historical quarterlies.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 12; Acts 1971, No. 500, p. 1213, § 8.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States  72, 85.

**Corpus Juris Secundum:**

C.J.S. States §§ 123, 145.

**§ 41-9-255. Alabama State Historic Preservation Fund. [References](#)**

There is hereby established in the State Treasury a fund to be known as the "Alabama State Historic Preservation Fund" into which shall be deposited all moneys received by the commission from admissions, inspection fees, gifts, donations, grants, leases, rentals, bequests, loans, governmental appropriations or any other sources, either public or private. Such funds shall be used by the commission to pay the costs of the maintenance, acquisitions, preservation and operation of its acquisitions and for carrying out any and all of the purposes of this division, including the payment of the salaries of any employees of said commission and any expenses of said commission. Money contributed to or deposited in this fund for capital outlay projects and from any source other than state appropriations for operations shall not revert to the General Fund of the state, but shall remain in the preservation fund until expended by the commission.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 4; Acts 1971, No. 500, p. 1213, § 3.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States ☒ 45, 67, 72.

**Corpus Juris Secundum:**

C.J.S. States §§ 79-80, 82, 120-121, 123, 136-138, 140.

**§ 41-9-256. Exemption from taxation of commission and properties, income, etc., thereof. [References](#)**

The commission, as an agency of the State of Alabama, shall constitute a nonprofit governmental agency and shall have a tax-exempt status, and the properties of the commission and the income therefrom, all lease agreements and contracts made by it shall be forever exempt from any and all taxation by the State of Alabama and any political subdivision thereof, including, but not limited to, income, admission, amusement, excise, sales, use and ad valorem taxes.

(Acts 1966, Ex. Sess., No. 168, p. 190, § 9.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States ☒ 67.

**Corpus Juris Secundum:**

C.J.S. States §§ 120-121, 136-138, 140.

**§ 41-9-257. Council on Historic Pilgrimages -- Created; purpose. [References](#)**

There is hereby created the Alabama Council on Historic Pilgrimages, the same to be established under the auspices of the Alabama Historical Commission, said council having the purpose of coordinating the efforts of each of the existing and proposed historic pilgrimages in the State of Alabama, whether publicly or privately sponsored.

(Acts 1975, 4th Ex. Sess., No. 67.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States ☒ 45.

**Corpus Juris Secundum:**

C.J.S. States §§ 79-80, 82, 136.

**§ 41-9-258. Council on Historic Pilgrimages -- Composition. [References](#)**

The Council on Historic Pilgrimages shall consist of seven individual members, one being appointed from each of the six districts of the state as the same shall be established by the Alabama Historical Commission and one being a representative of the Alabama Historical Commission. Additionally, there shall be two ex officio individual members, one representing the Alabama Travel Council and one representing the State Bureau of Tourism and Travel.

(Acts 1975, 4th Ex. Sess., No. 67.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States  46.

**Corpus Juris Secundum:**

C.J.S. States §§ 61, 80, 84, 102.

**§ 41-9-259. Council on Historic Pilgrimages -- Appointment and terms of members; duties. [References](#)**

(a) The individual members of the Council on Historic Pilgrimages who represent the six above described districts shall each be appointed, initially, by the Alabama Historical Commission, and three of the initially appointed members shall serve for terms of one year, with the other three serving for terms of two years each. Subsequent to the initial appointment, future individual members of the council shall be named for terms of two years each, and such future members of the council shall be named by the member historic pilgrimage organizations within the district represented by such council member.

(b) The Council on Historic Pilgrimages shall have the authority to establish such policies as it deems necessary for the carrying out of its purposes and to admit as general nonvoting members of the council such organizations in the State of Alabama engaged in the business of historic pilgrimages as it may, in its discretion, determine.


(c) The council shall have among its duties the duty to work closely with the Alabama Travel Council and the State Bureau of Tourism and Travel, and such organizations shall, themselves, provide assistance and advice to the Council on Historic Pilgrimages.

(Acts 1975, 4th Ex. Sess., No. 67.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States  46, 67, 72.

**Corpus Juris Secundum:**

C.J.S. States §§ 61, 80, 84, 102, 120-121, 123, 136-138, 140.

**§ 41-9-260. Transfer to commission of certain parts of Fort Morgan Military Reservation, etc.; development, restoration, etc., thereof by commission; operation of portion of reservation retained by Department of Conservation and Natural Resources.**

Morgan Military Reservation conveyed from the United States of America to the State of Alabama by quitclaim deed executed May 26, 1927, and on which Fort Morgan itself is located, and also a certain part of the Fort Morgan Military Reservation conveyed by the United States of America to the State of Alabama by deed executed December 16, 1946, including all that area south of the outer south face of the east-west sea wall and west of the north-south sea wall, is hereby transferred to the Alabama Historical Commission. All other property, both real and personal, including structures and objects located on either of said tracts of land, owned by the Fort Morgan Historical Commission and all of its powers, authority and jurisdiction over said property are also hereby transferred to the Alabama Historical Commission, and any right, title or interest which the state Department of Conservation and Natural Resources has in the above described property is also hereby transferred to the Alabama Historical Commission.

Such commission shall have full authority to develop, renovate, restore, preserve, maintain, operate, exhibit and publicize the above described properties in accordance with the powers and responsibilities of said Alabama Historical Commission.

Any right, title or interest of the Department of Conservation and Natural Resources in all that part of the Fort Morgan Military Reservation not hereinabove transferred to the Alabama Historical Commission shall continue to be held by the state Department of Conservation and Natural Resources, and all such property may be used as a public park for recreation, such as camping, boating, fishing and any other purposes for which the Department of Conservation and Natural Resources is authorized to maintain and operate a public park. The paved road that runs south at the sea wall shall, however, be open for use by vehicles for ingress and egress to the beach, and the Department of Conservation and Natural Resources shall not prohibit camping on any part of the reservation under their jurisdiction and control.

(Acts 1976, No. 628, p. 865.)

**§ 41-9-261. Designation of commission as agency responsible for restoration and preservation of State Capitol; powers and duties.** [Historical Notes](#) [References](#)

(a) The primary restoration, planning and preservation responsibility for the State Capitol of Alabama and its contiguous historic grounds, designated by the United States government as a national historic landmark, is hereby delegated to the Alabama Historical Commission.

(b) The Alabama Historical Commission is instructed to protect the historic and architectural integrity of this historic Greek revival masterpiece which served as the first Capitol of the Confederacy in 1861 and has served as the Capitol of Alabama for more than 120 years.

(c) The agencies of the state of Alabama charged with architectural, engineering, maintenance and alteration responsibilities for the State Capitol shall submit plans and specifications to the Alabama Historical Commission which shall review them for the retention of the historic merit and architectural integrity of the landmark prior to any

adaptive or construction activities.

(d) The commission shall be authorized and empowered to promote and preserve the historic character and architectural purity of the Capitol building and grounds and, to that end, it shall exercise its authority, control and general supervisory jurisdiction over the Capitol grounds, including walkways and driveways, and over all public areas within the Capitol building, including the outer office of the executive suite. Such authority shall specifically include, but not be limited to, the corridors, rotundas, lobbies, entranceways, stairways, restrooms, porticos, steps and elevators. The commission shall have no jurisdiction over the areas used for private office space, except as to structural modifications, but shall have jurisdiction over all areas specified in this section, and any and all changes contemplated, whether they be architectural in nature or merely the moving or replacement of furniture and furnishings, shall first require the approval of the commission.

With respect to the legislative chambers, legislative lounges and legislative meeting rooms, the commission shall be authorized and empowered to advise and consult with the Clerk of the House and the Secretary of the Senate and the presiding officer, respectively, and to suggest and recommend changes and renovations within such spaces that would be appropriate and in keeping with the preservation of the historic value and architectural purity therein; provided, however, that no changes or renovations to the said chambers, lounges or meeting rooms shall be undertaken or initiated without the approval of the Clerk of the House or the Secretary of the Senate and the presiding officer, respectively; provided further, that no changes or renovations to the Capitol building and grounds as defined in this section, other than the legislative chambers, legislative lounges and legislative meeting rooms provided for in the preceding provisions of this sentence, shall be undertaken or initiated without the approval of the Governor.

(e) Nothing in this section shall be construed as to supersede any authority of the state Building Commission and, if so, that portion is expressly repealed.  
(Acts 1969, No. 1148, p. 2153, § 2; Acts 1976, No. 634, p. 881.)

## **HISTORICAL NOTES**

### **HISTORY**

#### **Code Commissioner's Notes**

The provisions of subsection (d) of this section were formerly codified as former § 41-9-512. For reasons for transfer, see code commissioner's note to former § 41-9-512.

## **REFERENCES**

#### **CROSS REFERENCES**

As to State Building Commission generally, see § 41-9-140 et seq.

As to State Capitol Advisory Committee generally, see § 41-9-510 et seq.

#### **§ 41-9-262. Fort Tombeckbee Historical Advisory Board. [References](#)**

(a) An advisory board to be known as the Fort Tombeckbee Historical Advisory Board is hereby authorized to be appointed by the Governor for the purpose of advising the Alabama Historical Commission on the acquisition, maintenance and protection of

certain properties and objects of historical interest at Fort Tombeckbee in Sumter county. Said board shall be composed of three members, and the first appointees shall be appointed to serve for terms of two, four and six years, respectively, and subsequent appointees shall serve for terms of four years. Such members shall serve without compensation.

(b) Said board shall advise the Alabama Historical Commission: To acquire title, possession or control of such properties and also of objects of historic interest at Fort Tombeckbee as it may deem necessary or proper, to be maintained, preserved and protected on behalf of the State of Alabama; to mark in suitable manner the places or locations of historic interest at such point; and to prepare and publish for distribution pamphlets or other printed matter with respect thereto. The Alabama Historical Commission may, in its complete discretion, act upon any suggestions or advice of the advisory board. Any expenses incurred by the board shall be paid out of any money appropriated by the Legislature or by any gift, bequest or grant from whatever source. (Acts 1978, No. 516, p. 571.)

## **REFERENCES**

### **CROSS REFERENCES**

As to board of advisors of commission generally, see § 41-9-246.

### **LIBRARY REFERENCES**

62 C.J.S. Municipal Corporations § 225.

## Administrative Code – Archaeological Investigations

### ALABAMA HISTORICAL COMMISSION

#### CHAPTER 460-X-9 ARCHAEOLOGICAL INVESTIGATIONS

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**460-X-9-.02 Survey And Testing**

**460-X-9-.03 Submerged Cultural Resource Survey Grants**

**460-X-9-.01 Professional Qualifications.** All professional archaeologists (institutional, group, or individual) must apply to and be approved by the Council of Alabama Archaeology and the Alabama Historical Commission in order to conduct archaeology within the state.

(a) Procedure.

1. All professional archaeologists (institutional, group, or individual) wishing to conduct archaeology within the state must be certified by the Society of Professional Archaeology (SOPA) for their specific field of endeavor, i.e., prehistoric, historic, field work, etc., prior to application for consideration by the Alabama Historical Commission and the Council of Alabama Archaeology. The certification requirements as promulgated by the Society of Professional Archaeology (SOPA) are adopted by reference. These certification requirements are listed for each field of endeavor and describe the required education, experience, and accomplishments an applicant for certification must have in each field of endeavor. Copies of the certification requirements can be obtained from the Alabama Historical Commission at no charge.

2. All professional archaeologists (institutional, group, or individual) wishing to conduct archaeology within the state and having been certified by SOPA shall submit to the Alabama Historical Commission a resume and vita for review and determination by the Alabama Historical Commission and the Council on Alabama Archaeology.

3. Upon approval by the Council of Alabama Archaeology and the Alabama Historical Commission, the applicant shall be added to the list of approved professional archaeologists maintained by the Alabama Historical Commission.

4. Those persons approved as of November 30, 1991, on the List of Approved Professional Archaeologists maintained by the Alabama Historical Commission shall retain their approved status.

**Author:** Gregory C. Rhinehart

**Statutory Authority:** Code of Ala. 1975, §§41-9-241, 41-9-249, United States Code, 16 U.S.C. 470.

**History:** Filed October 22, 1991.

**460-X-9-.02 Survey And Testing.** This policy has been developed to aide archaeologists conducting archeological intensive survey (Phase I) or testing (Phase II) projects that are required as elements of cultural resource assessments for compliance with federal laws and regulations, including the National Historic Preservation Act (as amended); Executive order 11593; the National Environmental Policy Act of 1966; Department of the Interior regulations 36 CFR 60, 36 CFR 63, 36 CFR 66 and 36 CFR 79; and the Advisory Council on Historic Preservation regulations 36 CFR 800. We also request that this Policy be followed by federal agency archaeologists who are exempted from this by federal regulations. Phase II investigations shall not be initiated without consultation with the Alabama State Historic Preservation Office (ALSHPO) and the approval of a testing program. The purposes of these standards are to specify clearly and unequivocally the minimum requirements necessary to complete an archaeological survey, and to provide standardized criteria by which the State Historic Preservation Office will evaluate the archaeological segments of cultural resource assessments. The current State Historic Preservation Office for Alabama is the Alabama Historical Commission. These standards are designed for application to normal field situations likely to be encountered during intensive survey and testing projects; deviation from these standards is acceptable when dictated by circumstances, and requires only that the report contain justification of the procedures employed in that instance. Four aspects of archaeological survey standards are addressed in this document; (1) professional qualifications, (2) field work, (3) laboratory analysis and curation, and (4) reports;

(1) Professional Qualification Guidelines. It is suggested that applicants involved in the process required in Section 106 of the National Historic Preservation Act hire a principal investigator who meets the minimal professional qualifications in archaeology as set forth in "Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (Federal Register vol. 48 no. 190, September 29, 1983, Part IV, pages 44739). Cultural resource review history has demonstrated that surveys done by archaeologists who meet the Federal Standards have a greater success rate than other surveys. The Standards and

Guidelines determined by the National Park Service for archeologists are as follows:

"The minimal professional qualifications in archaeology are a graduate degree in archaeology, anthropology or closely related field, plus:

1. At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration or management.
2. At least four months of supervised field and analytic experience in general North American archeology; and
3. Demonstrated ability to carry research to completion."

In addition to these minimum qualifications, professional archaeologists should have at least one year of full-time professional experience at a supervisory level in the study of prehistoric and/or historic archaeological resources. Documentation (in the form of official graduate transcripts and a curriculum vitae) should be submitted to the State Historic Preservation Office prior to the commencement of fieldwork or should accompany the survey report.

All reports submitted to the ALSHPO are subject to peer review. All reports prepared by investigators who do not meet the standards will be circulated for peer review.

(2) Standards for Field Work. A project's Principal Investigator assumes full responsibility for adherence to these standards for intensive survey and testing, for the accuracy of the report, and for the appropriateness of the recommendations regarding National Register eligibility. Determination of a site's National Register status is the responsibility of the ALSHPO. Direct field supervision by a professionally qualified archaeologist is recommended for Phase I projects. Phase II & Phase III investigations require supervision by a professional archaeologist who meets the qualifications outlined in 36 CFR 61. Mitigation investigations may not proceed without consultation with the ALSHPO and the development of the appropriate written agreement with the ALSHPO.

(a) Every effective archaeological survey will require field methods that appropriately address the needs of the client, the nature of the landscape, the types of sites likely to be encountered, and the overall research goals of the project director. Consequently, all projects must begin with a written "Statement of Purpose" or "Scope of Work" or "Research Design". For a previously unsurveyed tract, such a statement might simply indicate a systematic procedure of site discovery. Projects involving test excavation would normally require methods designed specifically to determine site legibility to the National Register of Historic Places,

based on the research significance of the site. Since it is impossible to anticipate every field situation, these standards should be understood to apply to normal circumstances. When field conditions require some deviation from standard procedures, then any departure from these guidelines must be described and justified in terms of the statement of purpose or research design.

(b) Every archaeological survey must include a pedestrian walk-over, a visual inspection of the survey tract, and the systematic collection of significant artifacts from the ground surface. If some portion of a tract's original land surface has been completely destroyed by modern activities (such as by strip mining or quarrying), then no further survey procedures are required in that area beyond producing written and photographic documentation of the destruction and a map indicating the location and extent of the destroyed area.

(c) In most circumstances, additional survey methods will be necessary. Under normal field conditions, systematic subsurface testing (involving either shovel tests or auger tests of consistent width or diameter) should be conducted to the depth of the subsoil, with tests that measure no less than 30 CM in diameter and that are placed at intervals no greater than 30 meters (or no fewer than 9 tests per hectare). All soil from these should be screened through mesh no larger than 1/4 inch.

(d) Survey intensity, however, may vary depending on ground cover, soil type, the probability of buried sites, predictive models regarding the likelihood of sites occurring on different land forms, and the needs of the client. In locations where previous surveys have demonstrated a low probability of site discovery, the test interval can be extended up to, but no greater than, 60 meters. Close interval testing (5 to 10 meters) is recommended for establishing site boundaries. Remote sensing survey methods (such as metal detecting and ground penetrating radar) may also be useful for particular types of surveys. Screening may not always be feasible when testing areas with very heavy clay soils.

(e) In many areas of the state, subsoil lays within 30 to 50 centimeters of the ground surface. But in some locations (such as flood plains and coastal zones) archaeological sites can be found at much greater depths. When appropriate, this possibility must be addressed, either by deep testing or by restricting impact to the depth limits of archaeological testing.

(f) For areas of standing water (such as swamps and marshes) or where the top of the water table lays near the ground surface, usual methods may not be feasible. If those areas will be affected by proposed impact, they should not remain unexplored. If the principal investigator's knowledge of local geomorphology and past settlement patterns suggests that sites might exist in inundated locations, then some method of archaeological survey should be applied, such as the use of geological sediment coring equipment.

(g) As a general rule, test to subsoil at 30 meter intervals and screen the soil with 1/4 inch mesh, unless field conditions dictate some variance from this standard. In any case, the project report must contain a description of all survey methods employed and a justification for using less rigorous methods.

(h) Test excavation units for Phase II projects need to meet higher standards. These units must be excavated by natural strata, if identifiable (as determined by prior shovel testing or auguring); features must be excavated separately; and all soil must be screened through 1/4 inch or smaller mesh. Other techniques commonly used by professional archaeologists may be proposed but variance will require concurrence from the ALSHPO since the research significance of a site is evaluated during Phase II survey, screening through a finer mesh size or the use of flotation for a sample of each undisturbed cultural context may be required.

(i) During surveys and testing projects, artifacts should be collected according to a defined sampling strategy. For instance, if modern artifacts (less than 50 years old) are not collected, the strategy needs to be explained and applied consistently. Even so, the presence of modern artifacts shall be recorded in field records. Certain kinds of sites (such as shell midden and lithic quarries) can yield massive quantities of similar artifacts that are best dealt with by sampling, rather than by total recovery. In those cases, the samples shall be representative of the assemblage from which they are drawn, and the samples shall be selected from meaningful stratigraphic units. Systematic surface collection of surface artifacts is not recommended, since this could preclude future relocation of the site. All artifacts must be bagged and labeled by separate provenance.

(j) Survey recording also must meet minimum professional standards. Daily field notes must be kept by each testing team, and they must record all survey activities and observations. Each subsurface test must be designated with a distinguishing field number and its location accurately plotted on a large scale map or aerial photograph of the

survey tract. The use of Global Positioning System (GPS) for this purpose may prove increasingly useful in coastal areas where satellite data can be supplemented with Coast Guard radio transmissions, providing more precise location coordinates. Each soil type encountered during a survey shall be described by soil texture and color (preferably by reference to "sand grain" sizing gauges and Munsell color designation). The soil horizons found in each test must be described in the field notes in terms of horizon thickness, depth from the surface, and soil type, along with descriptions of the kinds of quantities of artifacts found.

(k) Standing structures must be placed in an archaeological context by means of the same subsurface survey and testing methods applied to other cultural features noted on the ground surface. Structures found associated with subsurface archaeological deposits must be assigned a state site number, and that number must be referenced in the corresponding cultural resources survey of standing structures conducted by an architectural historian.

(l) If human skeletal remains are discovered in the course of fieldwork, appropriate federal and state legal requirements must be addressed. Copies of the regulations dealing with the treatment of human remains may be obtained from the ALSHPO at no cost.

(m) Required field photographs include: representative views of different types of terrain and ground cover located in the survey tract; at least one photograph of every significant site feature and standing structure; and a photograph of each Phase II and Phase III excavation unit showing site strata.

(n) Every shovel test, auger test, and test excavation unit must be refilled upon completion of the survey project unless consultation with the ALSHPO has produced an agreement to forego filling.

(3) Standards for Laboratory Analysis and Curation. Every artifact must be cleaned, labeled with permanent provenance designation (either by writing directly on the artifact or by placing artifacts in appropriate labeled containers), and listed in an inventory organized by provenance. Type identifications should correspond to local and regional descriptive and classificatory systems, unless a rationale for new types is the project report. Artifacts requiring stabilization by a professional conservator shall receive prompt treatment. All survey collections (including artifacts, field records, laboratory records, and a copy of the final report) must be placed in an archaeological repository for permanent curation approved by the Alabama

Historical Commission. Such repositories must meet Department of the Interior 36 CFR 79 guidelines for "professional, systematic and accountable curatorial services on a long-term basis". These services include storing and maintaining collections in clean, physically secure conditions with appropriate environmental controls, and providing access and facilities for study of the collections.

(a) Institutions and organizations in the state that already comply with federal guidelines, or which submit a plan and timetable to the Alabama Historical Commission for upgrading their archaeological curation facilities and demonstrate progress in meeting federal guidelines, will be permitted to retain their own newly-acquired survey collections. Other institutions, organizations and private consultants (including university personnel acting as private consultants) must either include a curation agreement in the project report (indicating where collections will be curated and when they will arrive at that repository) or reference a curation agreement filed with the Alabama Historical Commission. These curation agreements must comprehensively address the requirements outlined in 36 CFR 79.

(4) Standards for Reports. The report of an archaeological survey shall be, above all, a clear and concise presentation of project purposes, methods, results and recommendations. There is no need to include "boiler-plate" descriptions of the environment, prehistoric cultural sequence or historical chronology if these do not directly contribute to an interpretation of the survey results.

(a) Each report shall contain the following sections.

1. The Title Page needs to include a report title (including the project name and location--city or county); the client's name and address; the report author's name(s), organizations, and address; the name of the lead state or federal agency and the contract or permittee, if applicable; and the date of report submission.

2. The Introduction must include the project's statement of purpose, scope of work, or research design; and a description of the survey tract by Township, Range, and Section designations, along with its location plotted on copies of the relevant portions of USGS maps. Also indicate the principal investigator for the survey. This individual must have presented documentation to the State Historic Preservation Office of his or her qualifications as a professional archaeologist prior to commencement of fieldwork. The Principal Investigator should present documentation of his or her qualifications as a professional

archaeologist to the State Historic Preservation Office prior to commencement of fieldwork.

3. The Literature and Document Search section includes results of searches of the National Register of Historic Places and the Alabama State Site Survey File for cultural resources on or near the survey tract; references to published archaeological papers or reports concerning the general or specific survey area; references to the Alabama Register, county histories, or any other pertinent documentation; and a discussion of the relevance of this background research to the survey.

4. In a Field Methods section, specify the personnel who conducted the field work and identify the field director; describe the physical condition of the survey tract, such as ground cover and terrain; include a description of the area surveyed; describe and justify the survey methods employed (including test depth and interval, excavation unit size, and screen mesh size), noting any deviation from the standards described here; present scaled maps or vertical aerial photographs locating the walked transects, shovel tests, auger tests, test excavation units and other survey features in relation to one or more verifiable datum points; explain the relationship between the expected direct and indirect effects of the client's proposed impact and the survey methods chosen; discuss any obstacles to your survey (e.g., standing water, soil conditions, inclement weather, etc.); and discuss artifact sampling and collection procedures.

5. Under the heading, Laboratory Methods and Collection Curation, describe laboratory treatment of collections; indicate which state approved archaeological repository will curate the artifacts and field records resulting from the survey; and when the collection will arrive there. If necessary, attach a copy of a curation agreement to document the ultimate disposition of the collection.

6. In the Results portion of the report, summarize results of oral history interviews of studies of private collection; discuss all of the cultural resources revisited or discovered in the course of the survey; provide maps, profile drawings, and photographs of test excavation unit stratification and features; include artifact descriptions, photographs, line drawings, and inventories; and provide site descriptions, with permanent site numbers assigned, and captioned site photographs. Copies of completed State Archaeological Site forms will be appended for each new site located during the investigations. If the survey requires the revisiting of a previously recorded site, the

investigator will prepare a statement of the conditions of the site. An amended form shall be attached if there are significant changes noted at the site or additional information is produced. Though it is not required the ALSHPO suggests that the archeologist attempt to visit any recorded sites near a survey area and assist in the continuing assessment and protection process.

7. A section on Survey Interpretation and Evaluation must include a summary of site interpretations; a discussion of the research significance of each site, based on site integrity and the archaeological data likely to be recovered; and evaluations of site eligibility to the National Register of Historic Places, according to criteria A, B, C, or D. This evaluation is a recommendation to the ALSHPO and does not constitute a Determination of Eligibility.

8. The final required section concerns Recommendations, including a discussion of known or potential impact, and specific recommendations for further archaeology. The client's development plans must be clearly summarized here to provide a context for evaluating the appropriateness of the archaeological recommendations. If sites found during survey are determined by the ALSHPO not eligible for nomination to the National Register, then no further work will be recommended. If eligibility cannot be determined from a Phase I intensive survey, then a recommendation for further work in the form of Phase II testing is appropriate. Phase II work cannot be begun without the recommendations and concurrence of the ALSHPO. For sites determined eligible, recommendations can include "Avoidance", "Protection/Stabilization", or "Data Recovery" to mitigate adverse effects on the archaeological resources.

9. Additional sections which should be appended to the report include items such as lists of references cited, artifact tabulations, and state site forms.

(b) Upon acceptance of the report by the client, the client or applicant is responsible for forwarding at least two (2) copies of the report to the ALSHPO. A copy will be forwarded by the AHC to the Alabama State Site File at Moundville at monthly intervals. All survey and testing reports are subject to external peer review during the State Historic Preservation Office's federal review process according to Section 106 of the National Historic Preservation Act. All reports submitted by individuals not meeting the criteria outlined in 36 CFR 61 will be circulated for peer review. Applicants will be informed of the receipt of reports and given a date for the completion of the peer review. Phase

II, Phase III and other major Cultural Resource Assessment documents will also be considered for review. A copy of the written peer review procedures will be made available to any interested party.

**Author:** Jim Parker

**Statutory Authority:** Code of Ala 1975, §§41-9-241, 41-9-249.

**History: New Rule:** Filed April 18, 1997; effective May 23, 1997.

**460-X-9-.03 Submerged Cultural Resource Survey.** These standards have been developed to guide institutions, groups, or individuals conducting submerged resource assessments for compliance with Alabama Law in efforts to seek and identify submerged resources within Alabama waters and for compliance with federal laws and regulations including but not limited to the National Historic Preservation Act of 1966, as amended, Executive Order 11593, Department of the Interior Standards, 36 CFR part 61, 36 CFR part 79, the Advisory Council on Historic Preservation Regulations 36 CFR part 800, and the Abandoned Shipwreck Act of 1987. The purposes of these standards are to specify clearly and unequivocally the minimum requirements necessary to complete a submerged resource survey of a permit area approved by the Alabama Historical Commission as the State Historic Preservation Office (SHPO) and to provide standardized criteria by which the SHPO will evaluate the results of the research efforts. These guidelines include four parts; (1) professional qualifications, (2) field work, (3) laboratory analysis and curation, and (4) reports.

(1) Professional Qualifications. Documentation in the form of official graduate transcripts and a curriculum vitae shall be submitted to the SHPO with any research request. The principal investigator for each submerged resource investigation shall meet the minimal professional qualifications which include a graduate degree in archaeology, anthropology, or closely related field, plus: At least one year full-time professional experience or equivalent specialized training in archaeological research, administration, or management; at least four months of supervised field and analytical experience in general maritime archaeology; demonstrated ability to carry research to completion. In addition to these minimum qualifications, professional archaeologists should have at least one year of full-time professional experience at a supervisory level in the study of marine archaeology.

(2) Standards for Field Work

(a) Basic Record and Literature Search Prior to Fieldwork.

1. Consult existing archaeological site files for previously recorded submerged historic resources within the permit area.

2. Consult with the SHPO to determine if properties listed on or eligible for the National Register of Historic Places are located within or near the permit area.

3. Consult other documents, maps, records, or local experts as necessary to determine the known history and prehistory of the area.

(b) Infield Survey.

1. Conduct an underwater remote sensing survey of the entire permit area to locate vessels, objects, and sites of potential prehistoric or historic significance.

2. All anomalies whether associated with the research design or not, will be recorded, plotted, and presented in the report with interpretations of each.

3. Minimally, the initial survey will include a magnetometer and side scan sonar survey and examination of sub-bottom materials. High resolution, shallow seismic profiler records or solid core data may be presented to document sub-bottom conditions.

4. The remote sensing shall be conducted by geophysical technicians qualified to operate the equipment and interpret the magnetometer, sided scan sonar, and seismic profiler data acquired. Final interpretation of the data and the report findings of the survey must be prepared by the principal investigator.

5. Initial reconnaissance survey procedures shall consist of line spacing not to exceed fifty (50) meters. A sufficient number of lines shall be run to insure full coverage of the permit area.

6. "X" and "Y" coordinates of all magnetic anomalies and side scan targets recorded by the survey shall be plotted on maps of sufficient scale and detail to allow for easy relocation should further studies be required or contemplated.

7. Whenever possible, Global Positioning System (GPS) coordinates shall be given for each anomaly and target recorded by the survey.

8. Locations of submerged abandoned river or bayou channels and natural levees that are identified through evaluation of sub-bottom data shall also be plotted on these maps.

(3) Standards for Laboratory Analysis and Curation. Although artifact(s) retrieval, either loose or attached, is not part of this action, an instance may occur in which a find is considered extremely significant and/or endangered and retrieval is considered to be the only prudent and feasible

option. The permittee shall consult with the SHPO to request this retrieval providing all pertinent information to allow the SHPO to make an educated decision as to whether or not to allow the retrieval. Written approval from the SHPO shall be required for any such retrieval. If such an occasion does occur, the permittee shall provide the SHPO information so as to assure the SHPO that the permittee has the knowledge, expertise, facilities, and financial support to obtain, stabilize, preserve, and interpret the artifact(s).

Furthermore, the permittee shall provide the SHPO with the final disposition of the artifact(s) which shall be curated in an Alabama facility which meets the curatorial standards set forth in 36 CFR part 79.

(4) Standards for Reports. The report of a submerged resource survey should be, above all, a clear and concise presentation of the project purposes, methods, results, and recommendations.

(a) Title Page: needs to include a report title (including the project name and location); the report author's name(s), organizations, and address; and the date of submission.

(b) Introduction: must include the project's statement of purpose, scope of work, or research design; and a description of the survey tract along with its location plotted on copies of relevant maps (as previously described in this policy). This section should also indicate the principal investigator.

(c) Literature and Document Search: shall include the result of searches previously noted in this policy.

(d) Field Methods: shall specify the personnel who conducted the field work; describe the physical condition, i.e. weather conditions; a discussion of the survey equipment used; survey procedures; types of data collected; recording techniques; and any special analytical methods and techniques.

(e) Results: shall contain a discussion of the history of the general area of the permit with specific reference to any known vessel losses in the area or submerged resources in the area. This information should be used to correlate remote sensing data collected during the survey with potential shipwreck sites. The potential correlation of sub-bottom data with submerged prehistoric archaeological sites shall also be discussed.

(f) Survey Interpretation and Evaluation: the report shall contain an inventory of all magnetic anomalies and side scan targets recorded. Evaluation of anomalies and side scan targets shall also be provided with supporting documentation.

(g) Recommendations: the report shall include recommendations for further study or cessation of activities supported by information provided in the report.

(h) Signature: the report shall be signed by the principal investigator (the professional marine archaeologist) responsible for the contents.

**Author:** Gregory Rhinehart

**Statutory Authority:** Code of Ala 1975, §§41-9-241, 41-9-249.

**History: New Rule:** Filed April 18, 1997; effective May 23, 1997.

## Administrative Code – Underwater Cultural Resources

### **ALABAMA HISTORICAL COMMISSION**

#### **ADMINISTRATIVE CODE**

#### **CHAPTER 460-X-12 ALABAMA UNDERWATER CULTURAL RESOURCES**

##### **TABLE OF CONTENTS**

##### **460-X-12-.01 Permits**

**460-X-12-.01 Permits.** The purpose of this regulation is to provide for the lawful protection, exploration, identification, excavation, preservation, and enjoyment of non-renewable underwater cultural resources as described in Alabama Act 99-595 which are subject to the exclusive dominion and control of the State of Alabama. The Alabama Historical Commission (Commission) as charged in Alabama Act 99-595 shall oversee the provisions of this Act relating to all submerged cultural resources. The Alabama Department of Conservation and Natural Resources (Conservation) shall assist the Commission with input and approval of actions within their jurisdiction of conservation.

##### **(1) Definitions**

(a) Archaeologist. 36 CFR 61 as amended is adopted by reference as the rule for minimum professional qualifications. Single copies of 36 CFR 61 which was formulated by the United States Department of the Interior and is published in the Federal Register are available at no cost from the Alabama Historical Commission. 36 CFR 61 contains the list of educational and experience requirements for persons to perform archaeological work. The principal investigator for submerged resource investigations meeting the minimal professional qualifications as stated in 36 CFR Part 61 as amended, may include a graduate degree from an accredited institution of higher education in anthropology with a specialization in archaeology or a graduate degree in history with a specialization in archaeology, plus: at least one year full-time professional experience or equivalent specialized training in archaeological research, administration, or management; at least nine months of supervised field and analytical experience in general maritime archaeology; and demonstrated ability to carry research to completion. Copies of documentation indicating the attainment of these qualifications shall be submitted to the Commission.

(b) CFR. Code of Federal Regulations.

(c) Commission. The Alabama Historical Commission acting as custodian of cultural resources for the State of Alabama.

(d) Conservation. The Alabama Department of Conservation and Natural Resources acting as the custodian for the bottoms of

the rivers, lakes, bays, and the Gulf of Mexico belonging to the State of Alabama.

(e) Contract. Issued by the Commission pursuant to Alabama Act 99-595 and these regulations by which the applicant may conduct explorations, identifications, and/or excavations.

(f) Contractor. Any individual, company, corporation, private or public institution determined by the Commission to be appropriately qualified, that has applied for and received a permit or contract from the Commission to begin exploration or excavation activities in state-owned waters.

(g) Cultural Resources. All abandoned shipwrecks or remains of those ships and all underwater archaeological treasures, artifacts, treasure troves, or other cultural artifacts and materials, whether or not associated with any shipwreck that are contained in or on submerged lands belonging to the State of Alabama and the sea within the jurisdiction of the State, and that have remained unclaimed for more than 50 years, excluding therefrom sunken logs, cants, and timber resources of any other type not associated as part of a shipping vessel and are eligible for or listed in the National Register of Historic Places or the Alabama Register of Landmarks and Heritage.

(h) Excavation. The study and intentional removal from submerged land belonging to the State by accepted scientific methods, of any objects recognized as cultural resources.

(i) Exploration. The systematic examination by actual scientific survey of an area of submerged land belonging to the State for the purpose of locating and recognizing cultural resources.

(j) Permit. Same as (e) above.

(k) Permittee. Same as (f) above.

(l) Recreational Dive. The recreational or sport diving to view or to examine submerged cultural resources where not specifically prohibited.

(m) Submerged Lands. Lands under navigable waterways owned or controlled by the State of Alabama.

(n) Treasure Trove. Any gold bullion, ingots, gold dust, silver bars, and other precious metals or stones.

## (2) General Requirements

(a) Cultural resources shall not be taken, damaged, destroyed, salvaged, excavated, or otherwise altered without a current contract or permit obtained from the Commission.

(b) Permits which involve the displacement of ten cubic yards or more or that may occur in sensitive areas may also require the approval of Conservation.

(c) It shall be the responsibility of the contract or permit holder to obtain permission from any federal agency having

jurisdiction which includes, but is not limited to, the U.S. Navy, the U.S. Coast Guard, the Tennessee Valley Authority and the U.S. Army Corps of Engineers.

(d) Any permit approved by the Commission shall be required to be available for inspection at the dive site.

(e) A Search and Identification Permit and an Excavation/Salvage Permit are valid for six months unless special circumstances may require a longer period. At the end of the permit period, the Permittee may request a new permit. The granting of a new permit shall be determined by the Commission and in some permits, also by Conservation. This determination shall be based, in part, upon the successful completion of the permittee's responsibilities under the previous permit and upon the Commission's determination as to what is in the best interest of the cultural resource and the State.

(f) A sport/recreation permit is valid for one year.

(g) The permittee shall not disclose the exact location or coordinates of any cultural resources located to anyone except the Alabama State Archaeologist or his/her designee.

(h) No guarantee of being granted a new permit is stated or implied.

(i) Failure to meet the permit requirements may result in the permit being terminated or a new permit request being refused.

(j) Termination of a Search and Identification Permit or an Excavation/Salvage Permit may occur if no significant activity takes place within the permit time frame.

(k) It is the Permittee's responsibility to request a new permit prior to the end of the current permit activities. Failure to do so will result in the permit expiring.

(l) The Commission, Conservation, the State of Alabama, their agents or employees shall in no way be held liable for any accident, incident, or cost incurred as a result of any permitted activity.

(m) The Commission shall respond to permit requests within thirty days of receipt of the request.

(3) Classification of Permits. No permit from the Commission is required to dive in Alabama's waters except as defined herein.

(a) Sport or Recreational Divers Permit. The following permit shall be used for sport or recreational divers permission:

The Alabama Historical Commission issues this permit to \_\_\_\_\_ for the enjoyment of Alabama's submerged cultural heritage. This permit is for pleasure only and no systematic search is allowed. If a systematic

search is desired, the Permittee should apply for the Search and Identification Permit 40-x-12-.01(3)(a)(b).

This permit shall be valid for all waters and bottoms belonging to the State of Alabama with the exception of the Mobile Bay Battlefield Corridor, the Spanish Fort/Blakely Corridor, the Battery Gladden/Battery McIntosh Corridor (a copy of these coordinates may be obtained from the Commission), or other sites determined eligible for or listed on the National Register of Historic Places or the Alabama Register of Landmarks and Heritage by the Commission, or sites within areas under active investigation (permit). SPECIAL NOTE: submerged lands belonging to the Tennessee Valley Authority, the U.S. Army Corps of Engineers, and public utilities may require specific and separate approval from these agencies prior to diving on their submerged bottoms.

The permit shall be valid for one year effective the date this permit is signed. A single permit held by an accredited dive instructor who teaches diving or who takes groups of divers to sites will be sufficient for the group as a whole if the instructor/leader takes responsibility for the actions of his/her students. A permit for each individual is required for all other groups.

The Permittee may visit all shipwreck sites and inundated archaeological sites within State of Alabama waters excluding the above noted exceptions. These include: the Mobile Bay Battlefield Corridor, the Spanish Fort/Blakely Corridor, and the Battery Gladden/Battery McIntosh Corridor. No excavation, boring, or alteration of a shipwreck site or inundated archaeological site shall be conducted under this permit.

No artifacts either attached or loose shall be retrieved at a shipwreck site or inundated archaeological site.

Should the Permittee discover an underwater cultural resource that he/she believes is unknown to the Commission, he/she will provide the Alabama State Archaeologist with a short report that will include a description of the find and a location map.

The Permittee shall not disclose exact location or coordinates of any cultural resources located except to the Alabama State Archaeologist or his/her designee.

In no way shall the Commission, the State of Alabama, their agents or employees, be held liable for any accident, incident, or cost incurred by this permit activity.

The rights and approvals granted to the Permittee by the Commission for this permit activity shall in no way be

transferred or subcontracted to any other individuals or companies.

Issuance of this permit by the Commission to the Permittee shall in no way negate the responsibility of the Permittee from obtaining any and all federal or state permits or approvals or complying with any or all federal or state laws or regulations.

Issuance of this permit by the Commission to the Permittee shall in no way negate the State of Alabama's ownership of all shipwrecks shipwreck sites, debris fields, inundated archaeological sites, or any and all artifacts associated with these sites.

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Executive Director Date  
Alabama Historical Commission

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Date

(b) Search and Identification Permit. The following permit shall be used for search and identification permission: The Alabama Historical Commission (Commission) grants an exclusive cultural resources Search and Identification Permit to \_\_\_\_\_ (Permittee), for the purpose of conducting systematic search procedures and diving as may be necessary to locate and identify the \_\_\_\_\_ with the following stipulations.

This permit shall be valid only for the area described below:

No excavation, boring, or alteration of the site with the exception of hand fanning shall be conducted unless specifically approved by the Commission through a written amendment to this stipulation, attached to this permit. No artifacts either attached or loose shall be retrieved without a specific amendment to this permit requested and approved by the Commission in writing.

This permit shall be valid for six (6) months effective on a date agreed upon by the Commission and the Permittee. A six (6) month extension may be granted by notifying the Commission, in writing, of the need for the extension and an explanation of the reasons for this need.

The Permittee shall allow, upon reasonable notice, Commission staff or their agents access to facilities and search activities.

The Permittee shall provide the Commission a map and description of the site and debris field (if any) upon completion of this permit activity.

The Permittee shall provide coordinates and listings for any and all major anomalies discovered during this permit

activity and these shall be plotted on a map provided to the Commission.

A monthly progress report shall be provided by the Permittee to the Commission.

A final report indicating methodology, techniques, maps, photographs or slides, survey data, findings and conclusions shall be submitted to the Commission no later than six (6) months following the conclusion of the permit activity and prior to any further permit consideration.

The Permittee shall not publically disclose exact location or coordinates of any cultural resources located except to the Alabama State Archaeologist or his/her designee.

In no way shall the Commission, the State of Alabama, their agents or employees, be held liable for any accident, incident, or cost incurred by this permit activity.

The rights and approvals granted to the Permittee by the Commission for this permit activity shall in no way be transferred or subcontracted to any other individuals or companies.

Issuance of this permit by the Commission to the Permittee shall in no way negate the responsibility of the Permittee from obtaining any and all federal or state permits or approvals or complying with any or all federal or state laws or regulations.

Issuance of this permit by the Commission to the Permittee shall in no way negate the State of Alabama's ownership of all shipwrecks shipwreck sites, debris fields, inundated archaeological sites, or any and all artifacts located by the permit activity.

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Executive Director Date  
Alabama Historical Commission

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Date

(c) Excavation/Salvage Permit. This permit is for the excavation and/or salvage of a located submerged cultural resource. Due to the unique qualities and sensitivity of submerged cultural resources and due to the technical and preservation needs of submerged cultural resources, these permits are negotiated on an individual basis. This ensures that the submerged cultural resource can be properly and successfully excavated or salvaged and that the preservation of the submerged cultural resource is guaranteed.

Excavation/ Salvage Permits which require the removal of ten (10) cubic yards of bottom or more shall also require the approval of Conservation which may result in permit modifications. A professional archaeologist is required to

be the principal investigator in order to qualify for this permit.

(4) Agency Responsibilities

(a) The Commission shall provide Conservation with all documentation for any permit request which requires the removal of ten cubic yards or more of submerged bottoms or which is within a sensitive area as defined by Conservation. A listing and map of any sensitive areas shall be provided to the Commission by Conservation. The permit shall not become effective until the Commission receives written approval from Conservation.

(b) The Commission may request of Conservation the restriction of commercial fishing activities in or around the immediate vicinity of a known cultural resource when the likelihood of damage or alteration to the cultural resource is deemed evident. The restriction shall not take place until the Commission receives written approval from Conservation.

(c) The Commission may request of Conservation the restriction of activities under its jurisdiction in or around the immediate vicinity of a known cultural resource when the likelihood of damage or alteration to the cultural resource is deemed evident. The restriction shall not take place until the Commission receives written approval from Conservation.

(5) Special Circumstances

(a) The Commission may consider requests for grant assistance on a case by case basis if the proposal is determined by the Commission to contribute, in an exceptional manner, to an understanding of state and national history.

(6) Penalties and Enforcement

(a) Any individual, company, corporation, private or public institution who intentionally and knowingly commits the crime of theft or disturbance of a cultural resource protected by the Commission as stated in Section 8 of the Alabama Act 99-595 shall be punishable, upon conviction, as provided by law.

(b) Any violation of the Alabama Act 99-595 caused by activities conducted for purposes not related to the exploration, excavation, or salvaging of cultural resources may be cured if the activities causing the violation are halted and the Commission is notified immediately. If formal investigations are desired, an application for a contract or permit shall be submitted to and subject to approval by the Commission.

(c) In all cases of arrest and conviction under Section 8 of the Alabama Act 99-595, all boats, instruments, and other equipment used directly in conjunction with the offenses are declared to be contraband and shall be seized and brought before the court having jurisdiction of the offense for proper disposal.

(d) All law enforcement agencies and officers, state and local, shall assist the commission in the enforcement of the Alabama Act 99-595.

**Author:** Gregory H. Rhinehart

**Statutory Authority:** Code of Ala. 1975, Title 41-9-249.(1), Title 41-9-249.1, Alabama Act 99-595.

**History: New Rule:** Filed April 26, 2001; effective May 31, 2001.

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## Commission Members

<b>Commissioner</b>	<b>Address</b>	<b>Term</b>
James P. Adams, Vice Chair	The University of Alabama School of Social Work PO Box 870314 Tuscaloosa, AL 35487-0314	7/6/06
Honorable Lucy Baxley Lieutenant Governor of Alabama	State House 11 South Union Street, Suite 725 Montgomery, AL 36130	Indefinite
Daniel D. Bennett, Treasurer	College of Architecture, Design & Construction 202 Dudley Commons Auburn University, AL 36849	4/27/09
Edwin C. Bridges	Department of Archives & History PO Box 300100 624 Washington Avenue Montgomery, AL 36130-0100	Indefinite
Nicholas H. Cobbs, Jr.	1110 Main Street Greensboro, AL 36744	11/12/06
J. Danny Cooper	522 Washington Avenue PO Box 4070 Montgomery, AL 36103	1/9/10
William "Bill" Drinkard, Chair	Drinkard Development, Inc. PO Box 996 Cullman, AL 35056-0996	11/12/06
Seth Hammett Speaker of the House	State House Montgomery, AL 36130-2950	Indefinite
Janice Hawkins	110 McKinley Drive Troy, AL 36081	1/30/10
Jeff Jakeman	Auburn University Center for the Arts and Humanities. Pebble Hill Auburn, AL 36849	4/27/09
Honorable Bobby M. Junkins	Judge of Probate Etowah County PO Box 187 Gadsden, AL 35902	10/19/06
Barnette Lawley	Dept. Of Conservation and Natural Resources Folsom Administration Building, Room 468 Montgomery, AL 36130-1450	Indefinite
Stephen Martin	Alabama Education Association PO Box 4177 Montgomery, AL 36103	1/9/08
Geri Moulton	1202 Government Street Mobile, AL 36606	5/3/06
Vivian Paul	Alabama Farmers Federation PO Box 848 Grove Hill, AL 36451	1/9/08

<b>Commissioner</b>	<b>Address</b>	<b>Term</b>	<b>Race</b>	<b>Gender</b>
Ann Petry	Historic Chattahoochee Commission 235 Liberty Hill-Glenn Road LaGrange, GA 30240	09/30/05	W	F
Lee Sentell, Secretary	Bureau of Tourism & Travel 401 Adams Avenue Montgomery, AL 36104	Indefinite	W	M
Craig Sheldon	Auburn University at Montgomery Department of Sociology PO Box 244023 Montgomery, AL 36124	12/31/08	W	M
Guy Spencer	PO Box 45 Huntsville, AL 35804	1/31/11	W	M
Honorable Bob Riley Governor of Alabama	Alabama State Capitol Building 600 Dexter Avenue Montgomery, AL 36130	Indefinite	W	M
Kippy Tate	State Building Commission 770 Washington Avenue, Suite 444 Montgomery, AL 36130-1150	Indefinite	B	M
Total Commissioners = 21	Black/African-American = 2; White = 19; Female = 5; Male = 16			